TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 129.

UNITED DICTIONARY COMPANY, APPELLANT,

vs.

G. AND C. MERRIAM COMPANY

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED OCTOBER 8, 1906.

(20,410.)

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a *Transcript of Record.*

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1905.

No. 1234.

G. & C. MERRIAM COMPANY, Appellant,
vs.
UNITED DICTIONARY COMPANY, Appellee.

Mr. Frank F. Reed, Mr. Edward S. Rogers, Mr. Charles N. Judson, Mr. William B. Hale, Counsel for Appellant.
Mr. James H. Peirce, Mr. George P. Fisher, Jr., Counsel for Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Transcript of Record Filed Dec. 21, 1905. (Printed Record.)

Filed Jan. 2, 1906.

EDWARD M. HOLLOWAY, *Clerk.*

b *Placita.*

Pleas in the Circuit Court of the United States for the Northern District of Illinois—Eastern Division, in Chancery sitting at the United States Court room, in the City of Chicago, in said District and Division before the Honorable Christian C. Kohlsaat, Circuit Judge of the United States for the Seventh Judicial Circuit, on Monday, the eighteenth day of December, being one of the days of the regular December term of said Court, in the year of our Lord one thousand nine hundred and five, and of our independence the one hundred and thirtieth year.

MARSHALL E. SAMPSELL, *Clerk.*

1 *Bill of Complaint. Filed May 2, 1905.*

Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

To the Honorable the Judges of the Circuit Court of the United States for the Northern District of Illinois:

G. & C. Merriam Company of Springfield Massachusetts brings this its bill of complaint against United Dictionary Company of Chicago, Illinois, and thereupon your orator complains and says:

First.

That your orator G. & C. Merriam Company is a corporation duly organized under the laws of the State of Massachusetts and a citizen of said state, having an office and place of business in the City of Springfield in the State of Massachusetts.

Second.

That as your orator is informed and believes, the defendant, United Dictionary Company is a corporation duly organized under the laws of the State of Illinois and a citizen of said State of Illinois, having an office and place of business at Chicago in said State of Illinois in said Northern District of Illinois.

Third.

That at and prior to the year 1892, your orator was and still is the owner and proprietor of a certain book entitled

WEBSTER'S HIGH SCHOOL DICTIONARY
a
Dictionary of the English Language
with an appendix
Abridged from Webster's International
Dictionary
800 Illustrations
Springfield, Mass.
G. & C. Merriam Co.

together with the right to copyright the same in accordance
2 with the Laws of the United States, of which said Dictionary your orator then and now a citizen and resident of the United States, was the proprietor.

Fourth.

Your orator further shows that thereafter and before the day of the first publication in this or any foreign country, to wit, on the 9th day of August 1892, your orator being desirous of obtaining a copyright therefor, delivered or caused to be delivered at the Office of the Librarian of Congress at Washington, District of Columbia, a printed copy of said title of said book, and did also, not later than the day of publication thereof in this or any foreign country, to wit, on said 9th day of August, 1892, deposit or cause to be deposited in said office of the Librarian of Congress at Washington aforesaid, two copies of said book, printed from plates made from type set within the limit of the United States, which said printed copy of said title of said book, and said two copies were duly received in the office of the Librarian of Congress, and written acknowledgments of such receipts duly delivered to your orator by said Librarian of Congress, each of which said acknowledgments your orator brings here into Court, together with a copy of said printed book.

Fifth.

And your orator further says that having duly copyrighted said book as aforesaid, your orator duly gave notice of said copyright by inserting in each copy of every edition published of said book, to wit, on the page immediately following the title page the word "copyright" together with the year the said copyright was entered and the name of the party by whom it was taken out in the words following, to wit:

Copyright, 1892.

By G. & C. Merriam Company

in accordance with the Statutes of the United States in such case made and provided.

3 Sixth.

And your orator further shows that the Librarian of Congress forthwith duly recorded the name of such copyrighted book in a book kept for the purpose in accordance with the Statutes of the United States in such case provided, in the words following, to wit:

No. 32753 LIBRARY OF CONGRESS,

Copyright Office, Washington.

To wit: Be it remembered,
That on the 9" day of August, anno domini 1892, G. & C. Merriam Co., of Springfield, Mass. have deposited in this Office the title of a book the title or description of which is in the following words, to wit:

Webster's High School Dictionary
a
Dictionary
of the
English Language
With an Appendix
Abridged from Webster's International Dictionary
800 Illustrations
Springfield Mass.
G. & C. Merriam Co.

the right whereof they claim as proprietors in conformity with the laws of the United States respecting Copyrights.

A. R. SPOFFORD,
Librarian of Congress.

2 copies of the above publication deposited August 9th, 1892.

A. R. SPOFFORD,
Librarian of Congress.

Seventh.

And your orator further says, that thereupon your orator said G. & C. Merriam Company as such owner and proprietor had the sole and exclusive liberty and right of printing, reprinting, publishing, completing, copying, finishing and vending the said book, and copies thereof for the full term of twenty-eight years from the
4 recording of said title as aforesaid and your orator brings here into Court and makes said original copyright or a duly certified copy thereof, and the certificate of deposit of said title and books issued to your orator by said Librarian of Congress a part of this its bill of complaint, together with a copy of said book; by reason whereof since said 9th day of August 1892, your orator has been the owner and publisher of said copyright book and has offered for sale and sold said book with the said notice of said copyright printed on the page next succeeding the title page of every edition thereof, as hereinbefore set forth.

That by reason of the long experience and great care of your orator in its business as publisher and dealer in books, and its skill in the publishing of said book, and by reason of the erudition, scholarship and well known popularity of your orator as proprietor, said book has become largely and widely known and has acquired a high and well deserved reputation and commanded and has had and still commands an extensive sale throughout the United States and has been and still is a source of great profit to your orator, and that the public have always acquiesced in the exclusive right of your orator as the proprietor, publisher and vender thereof.

Eighth.

And your orator further says that notwithstanding the said rights of your orator and of the protecting and reserving the same by said copyrighting and notice of copyright as aforesaid, the defendant the said United Dictionary Company, well knowing the premises and your orator's copyright and its exclusive rights secured thereby, and wilfully disregarding your orator's said rights thereunder, thereafter and since the 1st day of January 1905, without the consent of your orator, has wrongfully and fraudulently prepared and printed and caused to be prepared and printed said copyrighted book of your orator, and has sold and offered for sale or proposed to sell and offer for sale copies of your orator's said copyrighted book which it entitles Webster's Brief International Dictionary.

Ninth.

And your orator further says that at the time of printing and publishing said book of your orator, said defendant well knew that your orator was the owner and proprietor of said copyrighted
5 book, and that your orator had the copyright aforesaid, and also knew or had cause to know the copying of your orator's said book and the printing, publishing, exposing for sale and selling of the defendant's said book was without the consent of your orator and was and is an infringement of your orator's said copyright.

All of which actions, doings and pretenses are contrary to equity and good conscience and tend to the manifest wrong and injury to your orator in the premises, and to damage in a large amount, to wit: in the sum of ten thousand dollars and upwards, the exact amount of which your orator does not know.

Tenth.

In consideration whereof and forasmuch as your orator can only have adequate relief in the premises in this Honorable Court where matters of this nature are properly cognizable and relievable, to the end therefore that the said United Dictionary Company may if it can show why your orator should not have the relief hereby prayed and may according to the best and utmost of its knowledge, remembrance, information and belief, full, true, direct and perfect answers make to the premises, the oath being waived.

And that your orator may have such further or other relief in the premises as the nature of the circumstances of this case may require, and to this Honorable Court shall seem meet.

And may it please your Honor by the decree of this Honorable Court to direct that said defendant shall forfeit and pay to your orator said sum of ten thousand dollars damages, which your orator avers have been sustained by it by said infringement.

And may it please your Honors to grant unto your orator the writ of injunction issuing out of and under the seal of this Honorable Court, both provisional and perpetual, according to the form of the statute in such case made and provided, directed to the said United Dictionary Company, defendant, commanding, enjoining and restraining the said defendant from printing, publishing, selling or offering for sale copies of said books, or either of them, and also any copy of any book containing or embodying either the whole or any part of or infringing upon the said book of your orator as aforesaid.

6 And may it please your Honors to grant unto your orator a writ of subpœna of the United States of America issuing out of and under the seal of this Honorable Court, directed to the said United Dictionary Company, commanding it, on a day certain, therein to be named, and under a certain penalty, to be and appear in this Honorable Court, then and there to answer all and singular the premises, and to stand to, perform and abide such further order, direction, and decree as may be made against it.

And your orator, as in duty bound will ever pray.

G. & C. MERRIAM COMPANY,
By O. M. BAKER, *President.*
FRANK F. REED AND
E. S. ROGERS,
Solicitors for Complainant.

CHARLES N. JUDSON,
WM. B. HALL,
Of Counsel.

UNITED STATES OF AMERICA:

CITY OF NEW YORK, *County of New York, State of New York:*

O. M. Baker being duly sworn deposes and says, that he is the President of the complainant herein; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. That the reason why this verification is not made by the complainant herein is that it is a corporation. That all the facts stated in the bill of complaint herein, except such as are stated on information and belief are true within the knowledge of deponent.

O. M. BAKER.

Sworn to before me this 29 day of April, 1905.

[SEAL.] FREDERICK HAMBURG,
Notary Public, Kings County.

Certificate filed in New York County.

Summons.

Summons returned served omitted by agreement.

7 *Answer of Defendant. Filed May 22, 1905.*

Circuit Court of the United States, Northern District of Illinois, Eastern Division. In Equity.

No. —.

G. & C. MERRIAM COMPANY
vs.
UNITED DICTIONARY COMPANY.

Answer of United Dictionary Company, Respondent, to the Bill of Complaint of G. & C. Merriam Company, Complainant.

This respondent, saving and reserving unto itself the benefit of all exceptions to the errors and imperfections in said bill of complaint contained, for answer thereto, or to so much thereof as it is advised that it is necessary or material for it to make answer unto, answering, says.

1. Respondent admits that complainant is a corporation duly organized under the laws of the State of Massachusetts and a citizen of said state, with an office and place of business in the city of Springfield in said state; and admits that respondent is a corporation duly organized under the laws of the state of Illinois, and a citizen of said state, with an office and place of business at Chicago in said state.

COPY BOUND CLOSE

2. Respondent admits that at and prior to the year 1892, complainant was the owner and proprietor of a certain book entitled

"Webster's High School Dictionary
a
Dictionary of the English Language
with an appendix
Abridged from Webster's International
Dictionary
800 Illustrations
Springfield, Mass.
G. & C. Merriam Co."

together with the right to copyright the same in accordance with the laws of the United States.

3. Respondent further admits that before the first pub-
8 lication of said book in this or in any foreign country, to-wit: on the 9th day of August, 1892, complainant delivered or caused to be delivered at the office of the Librarian of Congress at Washington, District of Columbia, a printed copy of said title of said book, and did also, not later than the day of publication thereof, in this or any foreign country, to-wit: on said 9th day of August, 1892, deposit or cause to be deposited in said office of Librarian of Congress at Washington aforesaid, two copies of said book printed from plates made from type set within the limits of the United States, all as alleged in the Fourth paragraph of said bill of complaint.

4. Respondent denies that complainant duly gave notice of said copyright of said book by inserting in each copy of every edition published of said book on the title page or on the page immediately following the title page, the word "copyright," together with the year the said copyright was entered and the name of the party by whom it was taken out, as by law required, and as alleged in the Fifth paragraph of said bill of complaint. And respondent avers that after the entry of said copyright in the office of the Librarian of Congress as aforesaid, complainant, in the year 1894, and at various times thereafter, and prior to the bringing of this suit, printed and published, or with its consent and under its control caused to be printed and published, from type set and plates made therefrom within the limits of the United States, and so continues to do at London, England, one or more editions of said book, comprising many hundreds of copies, and avers that said edition or editions of said book so published at London, England, and the copies thereof, did not bear on the title page or on the page immediately following the title page, or elsewhere therein, the word "copyright" nor the year in which said copyright was entered, together with the name of the party by whom said copyright was taken out; and respondent submits that because of such failure to mark said copies of the edition or editions of said book published in London, England as aforesaid, with the word "copyright" and with the year said copyright was entered and with the name of the party by whom it was taken out upon the title page or upon the page immediately following the title page, complainant has lost, forfeited

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and abandoned all exclusive right to publish said book, to the copyright aforesaid, and all right to maintain this action against respondent.

5. Respondent further answering avers that in the year 1895 and at various times thereafter, complainant printed and published or with its knowledge, authority and consent and under its control caused to be printed and published at London, England, a certain book or dictionary, the printed matter upon the title page whereof was as follows:

"Webster's Brief International Dictionary.
A
Dictionary
of the
English Language
with an appendix
Containing a Pronouncing Vocabulary of Biblical,
Classical, Mythological, Historical, and
Geographical Proper Names
Abridged from
Webster's International
Dictionary
with 800 Illustrations
London
George Bell & Sons
G. & C. Merriam Co., Springfield, Mass.
1895."

That upon said title page of said book appeared no other or further notice or inscription than the words and figures above quoted, and that upon the page immediately following the title page of said book there was no notice, inscription or printed matter whatsoever. That the said book so published by complainant in London England, in the year 1895 and at various other times thereafter to the extent of many hundreds of copies, comprised 560 pages; that the first three pages and the last 34 pages of said book published in London, England, as aforesaid, differed in various substantial respects from the corresponding pages of said book copyrighted by complainant, as alleged in the bill of complaint, but that the intermediate pages of said book published in London, England, as aforesaid, viz: the pages occurring after the first three pages and before the last 34 pages were substantially identical with the corresponding pages of the book entered for copyright in the office of the Librarian of Congress, Washington, District of Columbia, in the bill of complaint alleged; and respondent avers that said books so published in London, England,

10 by complainant, or with its consent and under its control as aforesaid, have at various times since the year 1894 been offered for sale in the United States, by dealers in second-hand books; that said dealers obtained said books from persons who had purchased the same in England for use and not for sale and who had imported into this country, subject to the duty thereon, not more than

two copies of such books at any one time, and had obtained said books also from persons coming to this country from England, said persons having imported into this country said books as part of their household effects which they had actually used for not less than a year prior to said importation and had not imported for any other purpose nor for sale.

6. Respondent further answering, avers that for many years past, it has been the common and well-nigh universal practice to imprint upon and at the bottom of the title page of books (and at the point where the names of "George Bell & Sons" and "G. & C. Merriam Co." appear upon the title page of the book published in London, England, as aforesaid) the names of the person or persons by whom such books were published, and that by reason of such practice the public, and more particularly those engaged in the printing, publishing and selling of books, have long since come to recognize and regard the person or persons whose name or names so appear upon the title pages of books as the publishers of such books and as controlling the publication thereof; that by reason of the fact that for the past ten years, complainant has caused its name to appear, together with the name of "George Bell & Sons" upon the title page of the book published in London, England, as aforesaid, the public has long since been led to believe and continues so to believe that the said book so published at London, England, was published by complainant and said George Bell & Sons, and respondent submits that complainant cannot now be heard to assert that said book was not in fact published by complainant and with its full knowledge, authority and consent.

7. Respondent further answering, avers that the omission from said book published at London, England, as aforesaid, of the copyright notice, was not only with the full knowledge and consent of complainant but also by express agreement between complainant and the person or persons in England, who co-operated with complainant in effecting the printing and publication of said book; and respondent further avers that said omission of said copyright notice from said book and the various copies and editions thereof
11 published in London, England, existed at the time said books were published by complainant, or by and with complainant's knowledge, consent and authority and under its control as aforesaid.

8. Further answering, respondent avers, that complainant, by publishing or with its knowledge and consent and under its control causing to be published, many hundreds of copies of said book in London, England, as aforesaid, and without the copyright notice required by law appearing upon the title page or the page immediately following the title page, and by continuing such publication of said book without copyright notice thereon for a period of many years, to-wit: since about the year 1895, has led the public to believe either that complainant has abandoned its claim to the exclusive right to publish the book entered for copyright by it as in the bill of complaint alleged, or at least has abandoned all claim to the exclusive right to publish so much and such parts of said book so entered for copyright, as are common to or found in the book

published by complainant or with its consent and under its control, at London, England, as aforesaid; wherefore respondent submits that complainant cannot now be heard to assert any exclusive right or claim to said book entered for copyright as in the bill of complaint alleged, except in so far and with respect to such parts of said book as differed from the book published by complainant or with its knowledge, authority and consent at London, England, as aforesaid.

9. Further answering, respondent admits that without the consent of complainant, respondent has prepared for publication (but has not yet published) and has offered for sale, a book in all respects substantially identical except as to the imprint on the title page, with the book published at London, England, by complainant or with complainant's consent, and under its control, as aforesaid; and respondent avers that before preparing to publish said book respondent was advised by counsel that said book was public property and that respondent had a perfect right to print and publish the same wherever and whenever it desired.

10. Further answering, respondent denies that it has in any manner whatsoever trespassed upon any rights of complainant in the premises; denies that it has damaged complainant to any extent whatsoever; denies that complainant has any right to an
12 account for damages, profits, gains, charges or costs to be recovered from this respondent; denies said complainant's right to an injunction, either provisional or perpetual; and denies that complainant is entitled to any other or further relief whatsoever against this respondent.

And respondent craves leave to take benefit of the foregoing answer and of the defenses by it pleaded, with the same force and effect as if it had demurred to said bill of complaint where a demurrer had been proper; and as if it had entered special plea thereto where such plea had been proper.

Without this, that any other matter, cause or thing in said complainant's bill of complaint contained, material or necessary for this respondent to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge and belief of this respondent.

All of which matters and things this respondent stands ready and willing to aver, maintain and prove as this Honorable Court may direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

UNITED DICTIONARY COMPANY,
By GEORGE W. OGILVIE, *President.*

PIERCE & FISHER,
Solicitors for Defendant.
GEORGE P. FISHER, JR.,
Of Counsel.

STATE OF ILLINOIS, *County of Cook, ss:*

George W. Ogilvie of the city of Chicago, being duly sworn, deposes and says: I am president of the United Dictionary Company, respondent in the above entitled cause, and have signed said answer in behalf of said respondent. I have read said answer and know the contents thereof; that the same is true to my knowledge, except as to matters stated on information and belief and as to all such I believe said answer to be true.

—— ——.

13 Subscribed and sworn to before me this 22nd day of May, A. D. 1905.

KATHERINE GERLACH,
[SEAL.] *Notary Public, Cook County, Illinois.*

Replication filed May 22, 1905, omitted from this printed record by agreement.

Agreed Statement of Facts. Filed May 22, 1905.

In the United States Circuit Court for the Eastern Division of the Northern District of Illinois.

G. & C. MERRIAM COMPANY, Complainant,
v.
UNITED DICTIONARY COMPANY, Defendant.

Agreed Statement of Facts.

(1.) That the book entitled "Webster's High School Dictionary" was a new and original work written and composed for and at the expense of complainant, and that by contract with and purchase from the author, the literary property therein, and the right to copyright said book in the United States and Great Britain, as far as it legally might be copyrighted in that country by complainant, an American corporation, belonged to and was the sole property of complainant before any publication thereof in this or any foreign country. A copy of said book is hereto annexed and made a part hereof and designated "Webster's High School Dictionary."

(2.) That before any publication in this or any foreign country, on the 9th day of August, 1892, complainant deposited in the Office of the Librarian of Congress, at Washington, D. C., a printed copy of the title of said book and two complete printed copies of said book of the best edition printed; that said copies were so deposited
14 before any publication of said book in this or any foreign country, and were printed from type set and plates made within the limits of the United States.

(3.) That the fees required by law were paid and said title recorded and a certificate issued by the Librarian of Congress in words and figures as follows:

United States Certificate of Copyright.

"Librarian of Congress
Copyright
Office
United States — America.

Library of Congress.

Copyright Office, Washington.

To wit: Be It Remembered,

That on the 9th day of August, anno domini 1892, G. & C. Merriam Co., of Springfield, Mass. have deposited in this Office the title of a Book, the title or description of which is in the following words, to wit: Webster's High School Dictionary, A Dictionary of the English Language, with an appendix. Abridged from Webster's International Dictionary, 800 Illustrations. Springfield, Mass. G. & C. Merriam Co. the right whereof they claim as proprietors in conformity with the laws of the United States respecting Copyrights.

A. R. SPOFFORD,
Librarian of Congress.

2 copies of the above publication deposited August 9th, 1892.

[SEAL.]

A. R. SPOFFORD,
Librarian of Congress."

(4.) That notice of the copyright was given by inserting in the several copies of every edition of said book "Webster's High School Dictionary" published by complainant in the United States, on the page immediately following the title page, the words and figures "Copyright 1892 by G. & C. Merriam Company."

(5.) That the said book "Webster's High School Dictionary" was published thereafter and sold in large numbers in the United States.

(6.) That simultaneously with its publication in the United
15 States, said book under the name "Webster's High School Dictionary," was on August 9th, 1892, published in England; that the publication of said book in England was effected by complainant (then as now a corporation under the laws of the State of Massachusetts and located at Springfield, Massachusetts, but having a place of business at London, England), shipping to London, England, a number of copies of said book printed from type set or plates made therefrom within the limits of the United States, said copies being published in London, England, on August 9, 1892, and that on August 19, 1892, entries were duly made in the Book of Registry of Copyrights in the Hall of the Stationers' Company, pursuant to Act of Parliament, 5 and 6 Vict., c. 45, and a certificate issued in words and figures as follows:

English Certificate of Copyright.

"No. 1287.

Time of making the Entry. { Aug. 19, 1892.

Title of Book. { Webster's High School Dictionary A Dictionary of the English Language With an Appendix containing a Pronouncing Vocabulary of Biblical, Classical, Mythological, Historical and Geographical Proper Names Abridged from Webster's International Dictionary. 800 Illustrations.

Name of Publisher, and Place of Publication. { G. & C. Merriam Co. 4 & 5 York Street, Covent Garden, London, England (and Springfield, Massachusetts, U. S. A.)

Name and Place of Abode of the Proprietor of the Copyright. { G. & C. Merriam Co., Springfield, Massachusetts, U. S. A. and 4 & 5 York Street Covent Garden, London, England.

Date of First Publication. { 9th August, 1892.

I hereby certify that the above written is a true Copy of an Entry in the Book of Registry of Copyrights and Assign-
16 ments kept at the Hall of the Stationers' Company, pursuant to Act of Parliament, 5 & 6 Vict., c. 45.

Witness my hand, this twentieth day of August, 1892.

CHAS. ROBERT RIVINGTON,

Registering Officer Appointed by the Stationers' Company.

(Stamp)

Stationers Copyright Registry Company.

(Stamp)

(N (31) (5) One Shilling (92)

and that thereafter, and within one calendar month from August 9th, 1892, the date of first publication, one of the best copies published of said Webster's High School Dictionary was by the publisher thereof deposited between 10 A. M. and 4 P. M. at the British Museum with the officer of the Museum appointed to receive such copies, and that also within one calendar month from August 9, 1892, the date

of first publication, four copies of the edition of which the largest number was printed for sale, were delivered by the publisher at Stationers' Hall for the use of the following libraries: the Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh and the Library of Trinity College at Dublin.

(7.) That the Act of Parliament, 5 & 6 Victoria, c. 45, then in force, is as follows:

Act 5 and 6, Victoria, c. 45.

The Copyright Act, 1842.

5 & 6 Vict., C. 45.

An Act to Amend the Law of Copyright. (1st July, 1842.)

I. Whereas it is expedient to amend the Law relating to Copyright, and to afford greater Encouragement to the Production of literary Works of lasting Benefit to the World; Be it enacted, That from the passing of this Act an Act passed in the Eighth Year of the Reign of Her Majesty Queen Anne, intituled An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned; and also an Act passed in the Forty-first Year of the Reign of His Majesty King George the Third, intituled An Act for the further Encouragement of Learning in the United Kingdom of Great Britain and Ireland, by securing the Copies and Copyright of Printed Books to the Authors of such Books, or their Assigns, for the Time therein mentioned; and also an Act passed in the Fifty-fourth Year of the Reign of His Majesty King George the Third, intituled An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns, be and the same are hereby repealed, except so far as the Continuance of either of them may be necessary for carrying on or giving effect to any Proceedings at Law or in Equity pending at the Time of passing this Act, or for enforcing any Cause of Action or Suit, or any Right or Contract, then subsisting.

17

Repeal of former acts.

8 Anne, c. 19.

41 G. 3 c. 107.

54 G. 3 c. 156.

II. In the Construction of this Act the Word "Book" shall be construed to mean and include every volume, Part or Division of a Volume, Pamphlet, Sheet of Letter-press, Sheet of Music, Map,

Interpretation of Act.

Chart, or Plan separately published; the Words "Dramatic Piece" shall be construed to mean and include every Tragedy, Comedy, Play, Opera, Farce, or other scenic, musical, or dramatic Entertainment; the Word "Copyright" shall be construed to mean the sole and exclusive Liberty of printing or otherwise multiplying Copies of any Subject to which the said Word is herein applied; the Words "personal Representative" shall be construed to mean and include every Executor, Administrator, and next of Kin entitled to administration; the Word "Assigns" shall be construed to mean and include every Person in whom the Interest of an Author in Copyright shall be vested, whether derived from such Author before or after the Publication of any Book, and whether acquired by Sale, Gift, Bequest, or by Operation of Law, or otherwise; the Words "British Dominions" shall be construed to mean and include all Parts of the United Kingdom of Great Britain and Ireland, the Islands of Jersey and Guernsey, all Parts of the East and West Indies, and all the Colonies, Settlements, and Possessions of the Crown which now are or hereafter may be acquired; and whenever in this Act, in describing any Person, Matter, or Thing, the word importing the Singular Number or the Masculine Gender only is used, the same shall be understood to include and to be applied to several Persons as well as one Person, and Females as well as Males, and several Matters or Things as well as one Matter or Thing, respectively, unless there shall be something in the Subject or Context repugnant to such Construction.

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Endurance of term of copyright in any book hereafter to be published in the lifetime of the author; if published after the author's death.

III. The Copyright in every Book which shall after the passing of this Act be published in the Lifetime of its Author shall endure for the natural Life of such Author, and for the further Term of Seven Years, commencing at the Time of his Death, and shall be the Property of such Author and his Assigns: Provided always, that if the said Term of Seven Years shall expire before the End of Forty-two Years from the first Publication of such Book, the Copyright shall in that Case endure for such Period of Forty-two Years; and the Copyright in every Book which shall be published after the Death of its Author shall endure for the Term of Forty-two Years from the first Publication thereof, and shall be the Property of the Proprietor of the Author's Manuscript from which

such Book shall be first published, and his Assigns.

In cases of subsisting copyright, the term to be extended, except when it shall belong to an assignee for other consideration that natural love and affection, in which case it shall cease at the expiration of the present term, unless its extension be agreed to between the proprietor and the author.

IV. And whereas it is just to extend the Benefits of this Act to Authors of Books published before the passing thereof, and in which Copyright still subsists, the Copyright which at the Time of passing this Act shall subsist in any Book theretofore published (except as herein-after mentioned) shall be extended and endure for the full Term provided by this Act in Cases of Books thereafter published, and shall be the Property of the Persons who at the Time of passing of this Act shall be the Proprietor of such Copyright: Provided always, that in all Cases in which such Copyright shall belong in whole or in part to a Publisher or other Person who shall have acquired it for other Consideration than that of natural Love and Affection, such Copyright shall not be extended by this Act, but shall endure for the Term which shall subsist therein at the Time of passing of this Act, and no longer unless the Author of such Book, if he shall be living, or the personal Representative of such Author, if he shall be dead, and the Proprietor of such Copyright shall, before the Expiration of such term, consent and agree to accept the Benefits of this Act in respect of such Book, and shall cause a Minute of such Consent in the Form in that Behalf given in the Schedule to this Act annexed to be entered in the Book of Registry herein-after directed to be kept, in which Case such Copyright shall endure for the full Term by this Act provided in Cases of Books to be published after the passing of this Act, and shall be the Property of such Person or Persons as in such Minute shall be expressed.

Judicial committee of the privy council may license republication of books which the proprietor refuses to republish after death of the author.

V. And whereas it is expedient to provide against the Suppression of Books of Importance to the Public, it shall be lawful for the Judicial Committee of Her Majesty's Privy Council, on Complaint made to them that the Proprietor of the Copyright in any Book after the Death of its Author has refused to republish or to allow the Republication of the same, and that by reason of such Refusal such Book may be withheld from the Public, to grant a License to such Complainant to publish such Book in such Manner and subject to such Conditions as they may think fit, and it shall be lawful for such Complainant to publish such Book according to such Licence.

Copies of books published after the passing of this act, and of all subsequent editions, to be delivered within certain times at the British Museum.

VI. A printed Copy of the whole of every Book which shall be published after the passing of this Act, together with all Maps, Prints, or other Engravings belonging thereto, finished and coloured in the same Manner as the best Copies of the same shall be published, and also of any second or subsequent Edition which shall be so published with any Additions or Alterations, whether the same shall be in Letter-press, or in the Maps, Prints, or other Engravings belonging thereto, and whether the first Edition of such Book shall have been published before or after the passing of this Act, and also of any second or subsequent Edition of every Book of which the first or some preceding Edition shall not have been delivered for the Use of the British Museum, bound, sewed, or stitched together, and upon the best Paper on which the same shall be printed, shall, within One Calendar Month after the Day on which any such Book shall first be sold, published, or offered for Sale within the Bills of Mortality, or within Three Calendar Months if the same shall first be sold, published, or offered for Sale in any other Part of the United Kingdom, or within Twelve Calendar Months after the same shall first be sold, published, or offered for Sale in any other Part of the British Dominions, be delivered, on behalf of the Publisher thereof, at the British Museum.

Mode of delivering at the British Museum.

VII. Every Copy of any Book which under the Provisions of this Act ought to be delivered as aforesaid shall be delivered at the British Museum between the Hours of Ten in the Forenoon and Four in the Afternoon on any Day except Sunday, Ash Wednesday, Good Friday, and Christmas Day, to one of the Officers of the said Museum, or to some Person authorized by the Trustees, of the said Museum to receive the same, and such Officer or other Person receiving such Copy is hereby required to give a Receipt in Writing for the same, and such Delivery shall to all Intents and Purposes be deemed to be good and sufficient Delivery under the Provisions of this Act.

A copy of every book to be delivered within a month after demand to the officer of the stationers company, for the following libraries: the Bodleian at Oxford, the Public Library at Cambridge, the Faculty of Advocates at Edinburgh, and that of Trinity College, Dublin.

VIII. A Copy of the whole of every Book, and of any second or subsequent Edition of every Book containing Additions and Alterations, together with all Maps and Prints belonging thereto, which after the passing of this Act shall be published, shall, on Demand thereof in Writing, left at the Place of Abode of the Publisher thereof at any Time within Twelve months next after the Publication thereof, under the Hand of the Officer of the Company of Stationers who shall from Time to Time be appointed by the said Company for the Purposes of this Act, or under the Hand of

any other Person thereto authorized by the Persons or Bodies Politic and Corporate, Proprietors and Managers of the Libraries following, (*videlicet*), the Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, the Library of the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, be delivered, upon the Paper of which the largest Number of Copies of such Book or Edition shall be printed for Sale, in the like Condition as the Copies prepared for Sale by the Publisher thereof respectively, within One Month after Demand made thereof in Writing as aforesaid, to the said Officer of the said Company of Stationers for the Time being, which Copies the said Officer shall and he is hereby required to receive at the Hall of the said Company, for the Use of the Library for which such Demand shall be made within such Twelve Months as aforesaid; and the said Officer is hereby required to give a Receipt in Writing for the same, and within One Month after any such Book shall be so delivered to him as aforesaid to deliver the same for the Use of such Library.

Publishers may deliver the copies to the libraries instead of at the Stationers' Company.

IX. Provided also, That if any Publisher shall be desirous of delivering the Copy of such Book as shall be demanded on behalf of any of the said Libraries at such Library, it shall be lawful for him to deliver the same at such Library, free of Expense, to such Librarian or other Person authorized to receive the same (who is hereby required in such Case to receive and give a Receipt in Writing for the same), and such
21 Delivery shall to all Intents and Purposes of this Act be held as equivalent to a Delivery to the said Officer of the Stationers' Company.

Penalty for default in delivering copies for the use of the libraries.

X. If any Publisher of any such Book, or of any second or subsequent Edition of any such Book, shall neglect to deliver the same, pursuant to this Act, he shall for every such Default forfeit, besides the Value of such Copy of such Book or Edition which he ought to have delivered, a Sum not exceeding Five Pounds, to be recovered by the Librarian or other Officer (properly authorized) of the Library for the Use whereof such Copy should have been delivered in a summary Way, on Conviction before Two Justices of the Peace for the County or Place where the Publisher making default shall reside, or by Action of Debt or other Proceeding of the like Nature, at the Suit of such

Librarian or other Officer, in any Court of Record in the United Kingdom, in which Action, if the Plaintiff shall obtain a Verdict, he shall recover his Costs reasonably incurred, to be taxed as between Attorney and Client.

Book of registry to be kept at Stationers' Hall.

XI. A Book of Registry, wherein may be registered, as hereinafter enacted, the Proprietorship in the Copyright of Books, and Assignments thereof, and in Dramatic and Musical Pieces, whether in Manuscript or otherwise, and Licences affecting such Copyright, shall be kept at the Hall of the Stationers' Company, by the Officer appointed by the said Company for the Purposes of this Act, and shall at all convenient Times be open to the Inspection of any Person, on Payment of One Shilling for every Entry which shall be searched for or inspected in the said Book; and that such Officer shall, whenever thereunto reasonably required, give a Copy of any Entry in such Book, certified under his Hand, and impressed with the Stamp of the said Company, to be provided by them for that Purpose, and which they are hereby required to provide, to any Person requiring the same, on Payment to him of the Sum of Five Shillings; and such Copies so certified and impressed shall be received in Evidence in all Courts, and in all summary Proceedings, and shall be *prima facie* Proof of the Proprietorship or Assignment of Copyright or License as therein expressed, but subject to be rebutted by other Evidence, and in the Case of Dramatic or Musical Pieces shall be *prima facie* Proof of the Right of Representation or Performance, subject to be rebutted as aforesaid.

Making a false entry in the book of registry a misdemeanor.

22 XII. If any Person shall wilfully make or cause to be made any false Entry in the Registry Book of the Stationers' Company, or shall wilfully produce or cause to be tendered in Evidence any Paper falsely purporting to be a Copy of any Entry in the said Book, he shall be guilty of an indictable Misdemeanor, and shall be punished accordingly.

Entries of copyright may be made in the book of registry.

XIII. It shall be lawful for the Proprietor of Copyright in any Book heretofore published, or in any Book hereafter to be published, to make Entry in the Registry Book of the Stationers' Company of the Title of such Book, the Time of the first Publication thereof, the Name and Place of Abode of the Publisher thereof; and the Name and Place of Abode of the Proprietor of the Copyright of the said Book, or of any Portion of such

Copyright, in the Form in that Behalf given in the Schedule to this Act annexed, upon Payment of the Sum of Five Shillings to the Officer of the said Company; and it shall be lawful for every such registered Proprietor to assign his Interest, or any Portion of his Interest therein, by making Entry in the said Book of Registry of such Assignment, and of the Name and Place of Abode of the Assignee thereof, in the Form given in that Behalf in the said Schedule, on Payment of the like Sum; and such Assignment so entered shall be effectual in Law to all Intents and Purposes whatsoever, without being subject to any Stamp or Duty, and shall be of the same Force and Effect as if such Assignment had been made by Deed.

Persons aggrieved by any entry in the book of registry may apply to a court of law in term, or judge in vacation, who may order such entry to be varied or expunged.

XIV. If any Person shall deem himself aggrieved by any Entry made under colour of this Act in the said Book of Registry, it shall be lawful for such Person to apply by Motion to the Court of Queen's Bench, Court of Common Pleas, or Court of Exchequer, in Term Time, or to apply by Summons to any Judge of either of such Courts in Vacation, for an Order that such Entry may be expunged or varied; and upon any such Application by Motion or Summons to either of the said Courts, or to a Judge as aforesaid, such Court or Judge shall make such Order for expunging, varying, or confirming such Entry, either with or without Costs, as to such Court or Judge shall seem just; and the Officer appointed by the Stationers' Company for the Purposes of this Act shall, on the Production to him of any such Order for expunging or varying any such Entry, expunge or vary the same according to the Requisitions of such Order.

Remedy for the piracy of books by action on the case.

XV. If any Person shall, in any Part of the British Dominions, print or cause to be printed, 23 either for Sale or Exportation, any Book in which there shall be subsisting Copyright, without the Consent in Writing of the Proprietor thereof, or shall import for Sale or Hire any such Book so having been unlawfully printed from Parts beyond the Sea, or, knowing such Book to have been so unlawfully printed or imported, shall sell, publish, or expose to Sale or Hire, or cause to be sold, published, or exposed to Sale or Hire, or shall have in his Possession, for Sale or Hire, any such Book so unlawfully printed or imported, without such Consent as aforesaid, such Offender shall be liable to a special Action on the Case at the Suit

of the Proprietor of such Copyright, to be brought in any Court of Record in that Part of the British Dominions in which the Offence shall be committed: Provided always, that in Scotland such Offender shall be liable to an Action in the Court of Session in Scotland, which shall and may be brought and prosecuted in the same Manner in which any other Action of Damages to the like Amount may be brought and prosecuted there.

In actions for piracy the defendant to give notice of the objections to the plaintiff's title on which he means to rely.

XVI. In any Action brought within the British Dominions against any Person for printing any such Book for Sale, Hire, or Exportation, or for importing, selling, publishing, or exposing to Sale or Hire, or causing to be imported, sold, published, or exposed to Sale or Hire, any such Book, the Defendant, on pleading thereto, shall give to the Plaintiff a Notice in Writing of any Objections on which he means to rely on the Trial of such Action; and if the Nature of his Defence be, that the Plaintiff in such Action was not the Author or first Publisher of the Book in which he shall by such Action claim Copyright, or is not the Proprietor of the Copyright therein, or that some other Person than the Plaintiff was the Author or first Publisher of such Book, or is the Proprietor of the Copyright therein, then the Defendant shall specify in such Notice the name of the Person who he alleges to have been the Author or first Publisher of such Book, or the Proprietor of the Copyright therein, together with the Title of such Book, and the Time when and the Place where such Book was first published, otherwise the Defendant in such Action shall not at the Trial or Hearing of such Action be allowed to give any Evidence that the Plaintiff in such Action was not the Author or first Publisher of the Book in which he claims such Copyright as aforesaid, or that he was not the Proprietor of the Copyright therein; and at such Trial or Hearing no other Objection shall be al-
24 lowed to be made on behalf of such Defendant than the Objections stated in such Notice, or that any other Person was the Author or first Publisher of such Book, or the Proprietor of the Copyright therein, than the Person specified in such Notice, or give in Evidence in support of his Defence any other Book than one substantially corresponding in Title, Time, and Place of Publication with the Title, Time, and Place specified in such Notice.

No person, except the proprietor, &c., shall import into the British Dominions for sale or hire any book first composed, &c., within the United Kingdom and reprinted elsewhere, under penalty of forfeiture thereof, and also of L. 10 and double the value.

XVII. It shall not be lawful for any person, not being the Proprietor of the Copyright, or some Person authorized by him, to import into any Part of the United Kingdom, or into any other Part of the British Dominions, for Sale or Hire, any printed Book first composed or written or printed and published in any Part of the said United Kingdom, wherein there shall be Copyright, and re-printed in any Country or Place whatsoever out of the British Dominions; and if any Person, not being such Proprietor or Person authorized as aforesaid, shall import or bring, or cause to be imported or brought, for Sale or Hire, any such printed Book, into any Part of the British Dominions, contrary to the true Intent and Meaning of this Act, or shall knowingly sell, publish, or expose to Sale or let to Hire, or have in his Possession for Sale or Hire, any such Book, then every such Book shall be forfeited, and shall be seized by any Officer of Customs or Excise, and the same shall be destroyed by such Officer, and every Person so offending, being duly convicted thereof before Two Justices of the Peace for the County or Place in which such Book shall be found, shall also for every such Offence forfeit the Sum of Ten Pounds, and Double the Value of every Copy of such Book which he shall so import or cause to be imported into any Part of the British Dominions, or shall knowingly sell, publish, or expose to Sale or let to Hire, or shall cause to be sold, published, or exposed to Sale or let to Hire, or shall have in his Possession for Sale or Hire, contrary to the true Intent and Meaning of this Act, Five Pounds to the Use of such Officer of Customs or Excise, and the Remainder of the Penalty to the Use of the Proprietor of the Copyright in such Book.

Books may be seized by officers of customs or excise.

As to the copyright in Encyclopædias, periodicals, and works published in a series, reviews, or magazines.

XVIII. When any Publisher or other Person shall, before or at the Time of the passing of this Act, have projected, conducted, and carried on, or shall hereafter project, conduct, and carry on, or be the Proprietor of any Encyclopædia, Review, Magazine, Periodical Work, or Work published in a Series of Books or Parts, or any Book whatsoever, and shall have employed or shall employ any Persons to compose the same, or any Volumes, Parts, Essays, Articles, or Portions thereof, for Publication in or as Part of the same, and such Work, Volumes, Parts, Essays, Articles, or Portions shall have been or shall hereafter be composed under such Employment, on the Terms that the Copyright therein shall belong to

such Proprietor, Projector, Publisher, or Conductor, and paid for by such Proprietor, Projector, Publisher or Conductor, the Copyright in every such Encyclopedia, Review, Magazine, Periodical Work, and Work published in a Series of Books or Parts, and in every Volume, Part, Essay, Article, and Portion so composed and paid for, shall be the Property of such Proprietor, Projector, Publisher, or other Conductor, who shall enjoy the same Rights as if he were the actual Author thereof, and shall have such Term of Copyright therein as is given to the Authors of Books by this Act; except only that in the Case of Essays, Articles or Portions forming Part of and first published in Reviews, Magazines, or other Periodical Works of a Like Nature, after the Term of Twenty-eight Years from the first Publication thereof respectively the Right of Publishing the same in a separate Form shall revert to the Author for the Remainder of the Term given by this Act: Provided always, that during the Term of Twenty-eight Years the said Proprietor, Projector, Publisher, or Conductor shall not publish any Essay, Article, or Portion separately or singly without the Consent previously obtained of the Author thereof, or his Assigns: Provided also, that nothing herein contained shall alter or effect the Right of any Person who shall have been or who shall be so employed as aforesaid to publish any such his Composition in a separate Form, who by any Contract, express or implied, may have reserved or may hereafter reserve to himself such Right; but every Author reserving, retaining, or having such Right shall be entitled to the Copyright in such Composition when published in a separate Form, according to this Act, without Prejudice to the Right of such Proprietor, Projector, Publisher, or Conductor as aforesaid.

Proviso for authors who have reserved the right of publishing their articles in a separate form.

XIX. The Proprietor of the Copyright in any Encyclopædia, Review, Magazine, Periodical Work, or other Work Published in a Series of Books or Parts, shall be entitled to all the Benefits of the Registration at Stationers' Hall under this Act, on entering in the said Book of Registry the Title of such Encyclopædia, Review, Periodical Work, or other Work published in a Series of Books or Parts, the Time of the first Publication of the First Volume, Number or Part thereof, or of the First Number or Volume first published after the passing of this Act in any such Work which shall have been

Proprietors of encyclopædias, periodicals and works published in a series, may enter at once at Stationers' Hall, and thereon have the benefit of the registration of the whole.

published heretofore, and the Name and Place of Abode of the Proprietor thereof, and of the Publisher thereof, when such Publisher shall not also be the Proprietor thereof.

The provisions of 3 and 4 W. 4, c. 15, extended to musical compositions and the term of copyright, as provided by this Act, applied to the liberty of representing dramatic pieces and musical compositions.

XX. And whereas an Act was passed in the Third Year of the Reign of His late Majesty, to amend the Law relating to Dramatic Literary Property, and it is expedient to extend the Term of the sole Liberty of representing Dramatic Pieces given by this Act to the full Time by this Act provided for the Continuance of Copyright: And whereas it is expedient to extend to Musical Compositions the Benefits of that Act, and also of this Act; the Provisions of the said Act of His late Majesty, and of this Act, shall apply to Musical Compositions, and the sole Liberty of representing or performing, or causing or permitting to be represented or performed, any Dramatic Piece or Musical Composition, shall endure and be the Property of the Author thereof, and his Assigns, for the Term in this Act provided for the Duration of Copyright in Books; and the Provisions hereinbefore enacted in respect of the Property of such Copyright, and of registering the same, shall apply to the Liberty of representing or performing any Dramatic Piece of Musical Composition, as if the same were herein expressly re-enacted and applied thereto, save and except that the first public Representation or Performance of any Dramatic Piece or Musical Composition shall be deemed equivalent, in the Construction of this Act, to the first Publication of any Book: Provided always, that in case of any Dramatic Piece or Musical Composition in Manuscript, it shall be sufficient for the Person having the sole Liberty of representing or performing, or causing to be represented or performed the same, to register only the Title thereof, the name and Place of Abode of the Author or Composer thereof, the Name and Place of Abode of the Proprietor thereof, and the Time and Place of its first Representation or Performance.

Proprietors of right of dramatic representations shall have all the remedies given by 3 and 4 W. 4 c. 15.

XXI. The Person who shall at any time have the sole Liberty of representing such Dramatic Piece or Musical Composition shall have and enjoy the Remedies given and provided in
27 the said Act of the Third and Fourth Years of the Reign of His late Majesty King William the Fourth, passed to amend the Laws relating to Dramatic Literary Property during the

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whole of his Interest therein, as fully as if the same were enacted in this Act.

Assignment of copyright of a dramatic piece not to convey the right of representation.

XXII. No Assignment of the Copywright of any Book consisting of or containing a Dramatic Piece or Musical Composition shall be holden to convey to the Assignee the Right of representing or performing such Dramatic Piece or Musical Composition, unless an Entry in the said Registry Book shall be made of such Assignment, wherein shall be expressed the Intention of the Parties that such Right should pass by such Assignment.

Books pirated shall become the property of the proprietor of the copyright, and may be recovered by action.

XXIII. All copies of any Book wherein there shall be Copyright, and of which Entry shall have been made in the said Registry Book, and which shall have been unlawfully printed or imported without the Consent of the registered Proprietor of such Copyright, in Writing under his Hand first obtained, shall be deemed to be the Property of the Proprietor of such Copyright, and who shall be registered as such, and such registered Proprietor shall, after Demand thereof in Writing, be entitled to sue for and recover the same, or Damages for the Detention thereof, in an Action of Detinue, from any party who shall detain the same, or to sue for and recover Damages for the Conversion thereof in an Action of Trover.

No proprietor of copyright commencing after this Act shall sue or proceed for any infringement before making entry in the book of registry. Proviso for dramatic pieces.

XXIV. No Proprietor of Copyright in any Book which shall be first published after the passing of this Act shall maintain any Action or Suit, at Law or in Equity, or any summary Proceeding, in respect of any Infringement of such Copyright, unless he shall, before commencing such Action, Suit, or Proceeding, have caused an Entry to be made, in the Book of Registry of the Stationers' Company, of such Book, pursuant to this Act: Provided always, that the Omission to make such Entry shall not affect the Copyright in any Book, but only the Right to sue or proceed in respect of the Infringement thereof as aforesaid: Provided also, that nothing herein contained shall prejudice the Remedies which the Proprietor of the sole Liberty of representing any Dramatic Piece shall have by virtue of the Act passed in the Third Year of the Reign of His late Majesty King William the Fourth, to amend the Laws relating to Dramatic Literary Property, or of this Act, although no Entry shall be made in the Book of Registry aforesaid.

Copyright shall be personal property.

28 XXV. All Copyright shall be deemed Personal Property, and shall be transmissable by Bequest, or, in case of Intestacy, shall be

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subject to the same Law of Distribution as other Personal Property, and in Scotland shall be deemed to be Personal and Movable Estate.

General issue.

XXVI. If any Action or Suit shall be commenced or brought against any Person or Persons whomsoever for doing or causing to be done anything in pursuance of this Act, the Defendant or Defendants in such Action may plead the General Issue, and give the special Matter in Evidence; and if upon such Action a Verdict shall be given for the Defendant, or the Plaintiff shall become nonsuited, or discontinue his Action, then the Defendant shall have and recover his full Costs, for which he shall have the same Remedy as a defendant in any Case by Law hath; and all Actions, Suits, Bills, Indictments, or Information for any Offence that shall be committed against this Act shall be brought, sued, and commenced within Twelve Calendar Months next after such Offence committed, or else the same shall be void and of none effect; provided that such Limitation of Time shall not extend or be construed to extend to any Actions, Suits, or other Proceedings which under the Authority of this Act shall or may be brought, sued, or commenced for or in respect of any Copies of Books to be delivered for the Use of the British Museum, or of any One of the Four Libraries hereinbefore mentioned.

Limitation of actions.

Not to extend to actions, &c., in respect of the delivery of books.

XXVII. Provided always, That nothing in this Act contained shall affect or alter the Rights of the Two Universities of Oxford and Cambridge, the Colleges or Houses of Learning within the same, the Four Universities in Scotland, the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, and the several Colleges of Eton, Westminster, and Winchester, in any Copyrights heretofore and now vested or hereafter to be vested in such Universities and Colleges respectively, anything to the contrary herein contained notwithstanding.

Saving the rights of the universities, and the Colleges of Eton, Westminster, and Winchester.

Saving all subsisting rights, contracts and engagements.

XXVIII. Provided also, That nothing in this Act contained shall affect, alter, or vary any Right subsisting at the Time of passing of this Act, except as herein expressly enacted; and all Contracts, Agreements, and Obligations made and entered into before the passing of this Act, and all Remedies relating thereto, shall remain in full force, anything herein contained to the contrary notwithstanding.

29 XXIX. This Act shall extend to the United Kingdom of Great Britain and Ireland, and to every Part of the British Dominions. Extent of the act.

XXX. This Act may be amended or repealed by any Act to be passed in the present Session of Parliament. Act may be amended this session.

(8.) That on July 1, 1891, the President of the United States issued a proclamation set forth in Statutes at Large Vol. 27, pp. 981–982, which read as follows.

Proclamation, July 1, 1891.

By the President of the United States of America.

A Proclamation.

Whereas, it is provided by section 13 of the act of Congress of March 3, 1891, entitled "An Act to amend title sixty, chapter three, of the Revised Statutes of the United States, relating to copyrights," that said act "shall only apply to a citizen or a subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may, at its pleasure, become a party to such agreement:"

And whereas it is also provided by said section that "the existence of either of the conditions aforesaid shall be determined by the President of the United States by proclamation made from time to time as the purposes of this Act may require:"

And whereas satisfactory official assurances have been given that in Belgium, France, Great Britain and the British possessions, and Switzerland, the law permits to citizens of the United States the benefit of copyright on substantially the same basis as to the citizens of those countries:

Now, therefore, I, Benjamin Harrison, President of the United States of America, do declare and proclaim that the first of the conditions specified in section 13 of the act of March 3, 1891, fulfilled in respect to the citizens or subjects of Belgium, France, Great Britain, and Switzerland.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this first day of July, one
30 thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

[SEAL.] BENJ. HARRISON.

By the President:

WILLIAM F. WHARTON,

Acting Secretary of State.

(9.) That on July 18, 1894, a contract was entered into between complainant and George Bell & Sons, of London, England, relative to printing said book in England, in the following terms:

Contract Between George Bell & Sons and Complainant.

Articles of agreement entered into this eighteenth day of July, 1894, between G. & C. Merriam Company of Springfield, Massachusetts, and George Bell & Sons of London, England. Witnesseth:

Whereas said G. & C. Merriam Co. are the proprietors and owners of the electrotype plates and copyrights of Webster's High School Dictionary, a book which in the United States is published by the American Book Company of New York, under contract of rental from G. & C. Merriam Co. And whereas said G. & C. Merriam Co. have made an agreement for the use of similar plates in Great Britain by said George Bell & Sons for five years, in the nature of rental;

Now, Therefore, This Agreement Witnesseth:

First. Said G. & C. Merriam Co. for and in consideration of the sum of one dollar, in hand paid, the receipt of which is hereby acknowledged, and other valuable considerations, hereby agree to furnish said George Bell & Sons forthwith one complete set of the electrotype plates of Webster's High School Dictionary in good order for immediate use, and to deliver the same free on board boat in New York or Boston, said plates to be used by said George Bell & Sons in printing and publishing, in London, said High School Dictionary for the space of five years next ensuing after the delivery of said plates.

Second. In consideration whereof said George Bell & Sons hereby agree to pay the said G. & C. Merriam Co. a royalty of Three Pence per copy on the number of copies sold, it being understood that said G. & C. Merriam Co. accepts fifty pounds paid in advance for the
31 use of the plates the first year in lieu of the above mentioned royalty for all copies sold during the first year to be reckoned from Sept. 1, 1894. The account shall be made up annually on Sept. 1st and the royalty or rental for the use of said plates shall be paid by said George Bell & Sons to said G. & C. Merriam Co. by a remittance to said Merriam Company from their London office on the 16th days of the same month.

Third. Said George Bell & Sons further agree that they will bestow the same care upon said plates that they do upon their own plates and upon other plates in their charge or used by them, and that they will at the end of said five years after the delivery of said plates as aforesaid, return the same together with any duplicate plates which may have been made by them to said G. & C. Merriam Co. in as good condition as when received by them, the necessary wear and tear in their ordinary use alone excepted, and they will make no alterations in said plates other than the name of the publisher and the omission of the top line on the title page and the omission of the American copy-right mark and name of printer, without the written consent of said G. & C. Merriam Co.

Fourth. Said George Bell & Sons further agree that they will not,

either directly or indirectly, import into the United States or Canada, or sell therein, any copies of said Dictionary and will not sell to others for the purpose of importation, and will use all reasonable means to prevent their importation by others.

Fifth. It is further mutually agreed and understood that said use of said plates and the publication and sale of said Dictionary by said George Bell & Sons are to be solely on their own account and that said G. & C. Merriam Co. are not to be held responsible in any way for any claim of infringement of existing copyright in Great Britain because of the publication of said Dictionary by said George Bell & Sons.

Sixth. It is mutually understood and agreed that in the event of any violation of this contract by either party hereto the same shall be terminated at any time at the option of either party on thirty days' notice in writing; in which case the electrotype plates hereinbefore referred to and said duplicates, if any be made, shall be subject to the order of said G. & C. Merriam Co. and delivered to them at the expiration of said thirty days.

32 In Witness Whereof the parties hereto have hereunto set their hands and seals this eighteenth day of July, 1894.

Springfield, Mass., U. S. A.

GEORGE BELL & SONS.

Witnessed to George Bell & Sons
HENRY REYMOND.

G. & C. MERRIAM CO.,
By O. M. BAKER, *Treasurer.*

Witnessed to G. & C. Merriam Co.
ALBERT BOEDEKER.

That this contract was by its terms to expire in five years, but the time has been extended from time to time by the parties by oral agreement, and is now in full force; that said book under the title "Webster's Brief International Dictionary" has been beginning with the year 1894 printed and published in England under said contract only; that from the date of said contract the copies of said book published in England have been printed in Great Britain from type set and plates made therefrom within the limits of the United States, and that none of the copies of said book published at London, England under said contract between George Bell & Sons and complainant have borne the notice of the American copyright; and that none of the copies of said "Webster's Brief International Dictionary" have been imported into, or sold in the United States by complainant or George Bell & Sons or by any one acting for or on behalf of either of them.

That the said "Webster's Brief International Dictionary" so published, as aforesaid, comprised 560 pages; that the first three pages and the last thirty-four pages thereof differ in various respects from the corresponding pages of said "Webster's High School Dictionary," but that the intermediate pages of said "Webster's Brief International Dictionary," viz.: the pages occurring after the first three pages and

before the last thirty-four pages are substantially identical with the corresponding pages of the said "Webster's High School Dictionary." A specimen of Webster's Brief International Dictionary published under said contract is hereto attached, being identical with said book published in London.

(10.) That defendant, United Dictionary Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business in Chicago; that George W. Ogilvie is President & General
33 Manager, Walter R. Deuel is Vice-President and A. B. Chapin is Secretary. That said United Dictionary Company was organized by George W. Ogilvie, and that the capital stock is fifteen hundred dollars. That said United Dictionary Company was completely organized on April 21, 1905, and a copy of its charter is as follows:

Defendant's Charter.

STATE OF ILLINOIS.

DEPARTMENT OF STATE.

James A. Rose, Secretary of State.

To all to whom these presents shall come, Greeting:

I, James A. Rose, Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached is a true copy of the Articles of Incorporation of The United Dictionary Company, the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of State.

Done at the City of Springfield, this Twenty-eighth day of April, A. D. 1905.

[SEAL.]

JAMES A. ROSE,
Secretary of State.

STATE OF ILLINOIS, *Cook County, ss:*

We, the undersigned W. R. Deuel, George W. Ogilvie and Louis Manierre propose to form a corporation under an Act of the General Assemby of the State of Illinois, entitled, "An Act Concerning Corporations," approved April 18, 1872, and all acts amendatory thereof; and, for the purpose of such organization we hereby state as follows, to-wit:

1. The name of such corporation is The United Dictionary Company.

2. The object for which it is formed is printing, publishing, dealing in and manufacturing books, electrotype plates and other printing and publishing material.

3. The capital stock shall be Fifteen Hundred Dollars ($1500).
4. The amount of each share is One Hundred Dollars $100.
5. The number of shares Fifteen (15).
34 6. The location of the principal office is in the City of Chicago in the County of Cook State of Illinois.
7. The duration of the corporation shall be ninety-nine (99) years.

GEO. W. OGILVIE.
W. R. DEUEL.
LOUIS MANIERRE.

STATE OF ILLINOIS, *County of Cook, ss:*

I, Geo. W. Speich, a Notary Public in and for the said Cook County and State aforesaid, do hereby certify that on the seventh day of April, A. D. 1905, personally appeared before me W. R. Deuel, George W. Ogilvie and Louis Manierre to me personally known to be the same persons who executed the foregoing statement, and severally acknowledged that they executed the same for the purposes therein set forth.

In Witness Whereof, I have hereunto set my hand and seal the day and year above written.

GEO. W. SPEICH,
Notary Public.

My Commission expires November 21st, 1905.

Filed Apr. 8th, 1905.

[SEAL.]

JAMES A. ROSE,
Sec'y of State.

STATE OF ILLINOIS.

DEPARTMENT OF STATE.

James A. Rose, Secretary of State.

To all whom these presents shall come, Greeting:

Whereas, It being proposed by the persons hereinafter named to form a Corporation under an Act of the General Assembly of the State of Illinois, entitled, "An Act Concerning Corporations," approved April 18, 1872, in force July 1, 1872, and the amendments thereto, the object and purposes of which corporation are set forth in a statement duly signed and acknowledged according to law, and this day filed in the office of the Secretary of State.

Now, Therefore, I, James A. Rose, Secretary of State of the State of Illinois, by virtue of the power vested in and the duties im-
35 posed upon me by law, do hereby authorize, empower and license Geo. W. Ogilvie, W. R. Deuel and Louis Manierre, the persons whose names are signed to the before mentioned statement, as Commissioners to open books for subscription to the Capital Stock of The United Dictionary Company, such being the name of the

proposed corporation, as contained in the statement, at such times and places as the said Commissioners may determine.

In testimony whereof, I hereto set my hand and cause to be affixed the Great Seal of State.

Done at the City of Springfield, this 8th day of April, A. D. 1905, and of the Independence of the United States the one hundred and 29th.

JAMES A. ROSE,
Secretary of State.

To James A. Rose, Secretary of State of the State of Illinois:

The Commissioners, duly authorized to open Books of Subscription to the Capital Stock of The United Dictionary Company, pursuant to license heretofore issued, bearing date the 8th day of April, A. D. 1905, do hereby report that they opened books of subscription to the Capital Stock of said Company, and that the said Stock was fully subscribed; that the following is a true copy of such subscription, viz.:

We, the undersigned, hereby severally subscribe for the number of shares set opposite our respective names, to the Capital Stock of The United Dictionary Company and we severally agree to pay the said Company, for each share, the sum of One Hundred Dollars.

Name.	Shares.	Amount.
George W. Ogilvie	10	$1000
W. R. Deuel	3	300
A. B. Chapin	2	200

That on the twentieth day of April, A. D. 1905, at 181 E. Monroe Street in Chicago, Illinois, at the hour of 2 o'clock P. M., they convened a meeting of the subscribers aforesaid pursuant to notice required by law, which said notice was deposited in the postoffice, properly addressed to each subscriber, ten days before the time fixed therein, a copy of which said notice is as follows, to-wit:

To Messrs. George W. Ogilvie, W. R. Deuel, A. B. Chapin:

You are hereby notified that the Capital Stock of The United Dictionary Company has been fully subscribed, and that a meeting of the subscribers of such stock will be held at 181 E. Monroe Street on the 20th day of April, A. D. 1905, at 2 o'clock, P. M., for the purpose of electing a Board of Directors for said Company and for the transaction of such other business as may be deemed necessary.

36

(Signed) GEORGE W. OGILVIE,
W. R. DEUEL,
L. MANIERRE,
Commissioners.

That said subscribers met at the time and place in said notice specified, and proceeded to elect Directors and that the following

persons were duly elected for the term of one year, viz.: George W. Ogilvie, W. R. Deuel, A. B. Chapin.

And that the postoffice address of the business office of said Company is at Number 181 E. Monroe Street in the City of Chicago in the County of Cook and State of Illinois.

GEORGE W. OGILVIE,
W. R. DEUEL,
L. MANIERRE,
Commissioners.

STATE OF ILLINOIS.

DEPARTMENT OF STATE.

James A. Rose, Secretary of State.

To all to whom these presents shall come, Greeting:

Whereas, a Statement, duly signed and acknowledged, has been filed in the office of the Secretary of State, on the 8th day of April, A. D. 1905, for the organization of The United Dictionary Company under and in accordance with the provisions of "An Act Concerning Corporations," approved April 18, 1872, and in force July 1, 1872, and all acts amendatory thereof, a copy of which statement is hereunto attached:

And Whereas, a License having been issued to Geo. W. Ogilvie, W. R. Deuel and Louis Manierre as Commissioners to open books for subscription to the Capital Stock of said Company;

And Whereas, the said Commissioners, have, on the 21st day of April, A. D. 1905, filed in the office of the Secretary of State, a report of their proceedings under the said License, a copy of which report is hereunto attached:

Now, Therefore, I, James A. Rose, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do
37 hereby certify that the said The United Dictionary Company is a legally organized Corporation under the laws of this State.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of State.

Done at the City of Springfield, this 21st day of April, A. D. 1905, and of the Independence of the United States the one hundred and 29th.

JAMES A. ROSE,
Secretary of State.

(11.) That said George W. Ogilvie knew of the existence of the said book "Webster's High School Dictionary" and of the American and English copyright notices appearing therein, and of the contents of said book, and that in January, 1905, with knowledge thereof, but without knowledge of the contents of the book "Webster's Brief International Dictionary," or of said contract between said G. & C.

Merriam Co. and George Bell & Sons, said George W. Ogilvie caused Charles MacDonald, a news dealer in Chicago, to cable to England and procure for said Ogilvie a copy of said "Webster's Brief International Dictionary," which said MacDonald did, and about February 1st, 1905, received said book, which he immediately turned over to said George W. Ogilvie; that upon and after the receipt of said book from said MacDonald, said George W. Ogilvie became aware of the contents thereof, and of the fact that said book so obtained was identical with said "Webster's High School Dictionary" except as aforesaid, and from the inscriptions upon the title page assumed that the book so obtained was published in England under some arrangement between G. & C. Merriam Co. and George Bell & Sons; that said Ogilvie obtained said copy of said "Webster's Brief International Dictionary" not for the purpose of selling said individual copy, but for the purpose and intent of having the United Dictionary Company reprint and publish said book without the consent of either complainant or George Bell & Sons; that said United Dictionary Company thereupon caused the pages of said "Webster's Brief International Dictionary" to be photographed and reproduced verbatim and had plates made therefrom which completely reproduced said "Webster's Brief International Dictionary" and all parts thereof, excepting only the names of the publishers, and the
38 place and date of publication, and also reproduced Webster's High School Dictionary, except the first three and last thirty-four pages thereof.

(12.) That in a periodical known as "The Publishers' Weekly," on April 15, 1905, said United Dictionary Company caused to be published the following advertisement:

dant's advertisement.

IMPORTANT ANNOUNCEMENT

Ready May 8th, 1906

Webster's Brief International Dictionary

21 pages of Guide to Pronunciation.
4 " " Prefixes and Suffixes.
5 " " Rules for Spelling and Abbreviations.
496 " " Dictionary proper, A to Z.
34 " " Appendix of Mythological, Biblical, Classical, Historical and Geographical Proper Names.

560 is the total number of pages, 12mo, cloth.

300 Illustrations. Retail 75c.—Trade Price, 35c. for less than 100 copies; 32½c. for 100 to 250 copies; 30c. for 500; $275.00 per 1000, F. O. B. Chicago.

Compare this table of contents with a copy of "Webster's High School Dictionary" (the retail price of which is 90c. and net price is 80c.) and you will find it to be identical and can draw your own conclusions.

This volume, as its name implies, is compiled from Webster's International Dictionary—a still more important announcement in regard to which will be made shortly.

The combined (commercial agency) responsibility of the five publishers who are stockholders in the corporation about to issue this book is $1,500,000.

UNITED DICTIONARY CO.

Publishers, 181 Monroe St., Chicago, Ill.

GEO. W. OGILVIE, MANAGER.

which said advertisement was first seen by or known to complainant on April 16, 1905, and was the first notice or knowledge on complainant's part of the said acts and intentions of said United Dictionary Company. That said United Dictionary Company also issued and first circulated on or about April 14, 1905, the following circular:

36
Defendant's circular.

ANNOUNCEMENT
EXTRAORDINARY

To be Published May 5, 1905

WEBSTER'S
BRIEF
INTERNATIONAL
DICTIONARY

Retail Price, 75 Cents

UNITED DICTIONARY CO.
PUBLISHERS
181 MONROE ST., CHICAGO, ILL.
GEO. W. OGILVIE, Manager

Blas-phem'er (blăs-fēm'ẽr), *n.* — **Blas'phe-mous** (blăs'fē-mŭs), *a.* Containing blasphemy; impiously irreverent or reproachful toward God. — **Blas'phe-mous-ly**, *adv.* — **Blas'phe-my** (-fē-mĭ), *n.* Impious language against God or sacred things.

Blast (blăst), *n.* A destructive or pernicious wind; a forcible stream of air from an orifice; a blight; an explosion of powder; a burst of sound; a disease of sheep. — *v. t.* To injure; to wither; to blight; to rend; to split.

Bla'tant (blā'tənt), *a.* Bellowing, as a calf; noisy; brawling; boastful; vaunting.

Blaze (blāz), *n.* A stream of gas or vapor emitting light and heat; intense light; an outburst; a white spot on a horse's face; a mark made by cutting bark from a tree. — *v. t.* [BLAZED (blāzd); BLAZING.] To shine; to glow. — *v. t.* To make public (news, etc.); to mark (a tree) by stripping the bark.

Bla'zon (blā'z'n), *n.* A shield; a coat of arms; armorial bearings; ostentatious display; a show; a publication. — *v. t.* [BLAZONED (-z'nd); BLAZONING (-z'n-ĭng).] To depict; to display; to embellish. — **Bla'zon-ry** (-rĭ), *n.* Display; a coat of arms.

Bleach (blēch), *v. t. & i.* [BLEACHED (blēcht); BLEACHING.] To whiten. — **Bleach'er-y** (-ẽr-ĭ), *n.* A place where bleaching is done.

Bleak (blēk), *a.* Desolate and exposed; cold; cheerless. — **Bleak'ness**, *n.*

Blear (blēr), *a.* Dim or sore with rheum. — *v. t.* [BLEARED (blērd); BLEARING.] To dim (the eyes); to blur (the sight). — **Blear'eye'** (blēr'ī'), *n.* Chronic inflammation of the eyelids, with a gummy secretion.

Bleat (blēt), *v. i.* To cry as a sheep. — *n.* The cry of a sheep.

Bleed (blēd), *v. i.* [BLED (blĕd); BLEEDING.] To lose blood. — *v. t.* To let blood.

Blem'ish (blĕm'ĭsh), *v. t.* [BLEMISHED (-ĭsht); BLEMISHING.] To disfigure; to deform; to tarnish. — *n.* A deformity; a flaw; a defect; a fault; a disgrace.

Blench (blĕnch), *v. i.* [BLENCHED (blĕncht); BLENCHING.] To shrink; to flinch.

Blend (blĕnd), *v. t. & i.* To mix; to unite.

Blende (blĕnd), *n.* An ore of zinc.

Bless (blĕs), *v. t.* [BLESSED (blĕst) *or* BLEST; BLESSING.] To make happy; to invoke a blessing upon; to praise; to glorify. — **Bless'ed** (blĕs'ĕd), *a.* Happy; hallowed; blissful; joyful. — **Bless'ed-ness**, *n.* — **Bless'ing**, *n.* Means of happiness; divine favor; a wish of happiness; a benediction.

Blest (blĕst), *a.* Made happy; cheering.

Blet (blĕt), *n.* A decayed spot on fruit.

Blight (blīt), *v. t.* To blast; to prevent growth of; to frustrate; to ruin. — *n.* Mildew; decay.

Blind (blīnd), *a.* Destitute of sight: dark; obscure; undiscerning; unintelligible. — *v. t.* To deprive of sight; to darken; to obscure. — *n.* Something which hinders sight or keeps out light; a screen; a subterfuge. — **Blind'ly**, *adv.* — **Blind'ness**, *n.* — **Blind'er**, *n.*

Blind'fold' (blīnd'fōld'), *v. t.* To cover the eyes of; to hinder from seeing. — *a.* Blinded; heedless; reckless.

Blind'man's buff' (blīnd'mănz bŭf'). A play in which one person is blindfolded, and hunts the rest of the company.

Blind'worm (blīnd'wûrm), *n.* A small, burrowing, limbless lizard, having very minute eyes; a slow worm.

Blink (blĭngk), *v. i.* [BLINKED (blĭngkt); BLINKING.] To wink; to see with the eyes half shut; to twinkle; to glimmer. — *v. t.* To shut out of sight; to exclude; to evade. — *n.* A glimpse; a glance; a gleam; a sparkle; a dazzling whiteness from fields of ice. — **Blink'ard** (-ẽrd), *n.* One who blinks; that which twinkles. — **Blink'er**, *n.* One who blinks; a blind for horses; whatever obstructs sight or discernment.

Bliss (blĭs), *n.* Blessedness; felicity; happiness; joy. — **Bliss'ful**, *a.* Full of joy; supremely happy. — **Bliss'ful-ly**, *adv.* — **Bliss'ful-ness**, *n.*

Blis'ter (blĭs'tẽr), *n.* A thin, watery bladder on the skin; a plaster applied to raise a blister. — *v. t.* To raise blisters upon. — *v. t.* To rise in blisters.

Blithe (blīth), *a.* Gay; merry; joyous; sprightly; mirthful. — **Blithe'ly**, *adv.* — **Blithe'ness**, *n.* — **Blithe'some** (-sŭm), *a.* Gay; cheerful; blithe. — **Blithe'some-ness**, *n.*

Bloat (blōt), *v. t. & i.* To puff out; to swell. — *n.* A worthless, dissipated fellow. — **Bloat'er**, *n.* A herring, smoked and half dried.

Block (blŏk), *n.* A mass of wood, stone, etc.; a row of buildings; a system of pulleys or sheaves, arranged in a frame; an obstruction. — *v. t.* [BLOCKED (blŏkt); BLOCKING.] To hinder; to obstruct; to secure or support by blocks; to secure; to stop up. — **Block'ish**, *a.* Stupid; dull. — **Block'ish-ly**, *adv.* — **Block'ish-ness**, *n.*



Block.

Block-ade' (blŏk-ād'), *n.* The shutting up of a place by troops or ships. — *v. t.* To shut up (a town or fortress), so as to compel a surrender; to confine. — **Block-ad'er**, *n.*

Block'head' (blŏk'hĕd'), *n.* A stupid fellow; dolt.

Block'house' (blŏk'hous'), *n.* A wooden fort.

Block'ish, *a.*, etc. See under BLOCK, *n.*

Bloom'a-ry, *n.* See BLOOMERY, under BLOOM, a mass of iron.

Blond, Blonde (blŏnd), *a.* Fair; light colored. — *n.* A person of fair complexion, light hair, and blue eyes; silk lace (called also *blonde lace*).

Blood (blŭd), *n.* The red fluid circulating in animal bodies; relation by natural descent; consanguinity; kindred; lineage; honorable birth; the shedding of blood; murder; disposition; passion; a man of fire or spirit; a rake. — *v. t.* To let blood from; to bleed; to stain with blood. — **Blood'y** (-ĭ), *a.* Containing or stained with blood; murderous; cruel. — *v. t.* To stain with blood. — **Blood'i-ly**, *adv.* — **Blood'i-ness**, *n.* — **Blood'less**, *a.* Destitute of blood; lifeless; without bloodshed; spiritless. — **Blood'guilt'y** (-gĭlt'ĭ), *a.* Guilty of murder or bloodshed. — **Blood'guilt'i-ness**, *n.* — **Blood'thirst'y**, *a.* Murderous; cruel. — **Blood'thirst'i-ness**, *n.* — **Blood heat.** Heat equal to the temperature of blood (about 98° Fah. in man). — **Blood horse.** A horse of the purest stock. — **Blood vessel.** A vessel in which animal blood circulates; a vein; an artery.

Blood'hound' (blŭd'hound'), *n.* A ferocious variety of dog, of very acute smell.

Blood'root' (blŭd'rōōt'), *n.* A plant used medicinally, having a red root and sap.

WEBSTER'S

Brief International Dictionary

12 Mo, 560 Pages. Bound in Cloth. 800 Illustrations.

Quoting from the preface of the book and describing it we have to say: "As its name implies, this volume is compiled from Webster's International Dictionary." Its appendix, etc., comprises 64 pages and the dictionary proper (A to Z) 496 pages, a total of 560 pages. Please compare the sample page opposite with the same numbered page in Webster's High School Dictionary.

G. & C. Merriam Co., Springfield, Mass., or the American Book Co., New York, Cincinnati and Chicago, publish Webster's High School Dictionary and sell it for 98c, retail, less 20 per cent discount.

The United Dictionary Co., Chicago, Ill., publish Webster's Brief International and sell it at the following prices. Retail, 75c.

Less than 100 copies,	35c	per copy, net
100 to 250 "	32½c	" " "
250 to 500 "	30c	" " "
1000 or more "	27½c	" " "

If thumb indexed add 10 cents per copy to above prices.

Order "Webster's Brief International" from your jobber, or the publishers of any of the numerous Webster Dictionaries now on the market—those publishers cannot fill orders for this book, as they do not publish it, but some of them have kindly consented to, and the others doubtless will, send your orders to us to fill; or, if you prefer—as the United Dictionary Co. will fill all orders and bill same—save time by sending direct to the

UNITED DICTIONARY CO.

181 Monroe Street, Chicago, Ill. Geo. W. Ogilvie, Manager.

PREFACE.

This volume, as its name implies, is compiled from Webster's International Dictionary of the English Language. It is an entirely new work, and contains many words and definitions not to be found in any of the other numerous Dictionaries based upon previous editions of Webster's great work.

Its purpose is to give the correct orthography, pronunciation, and definition of all the words most commonly in use in ordinary conversation. The pronunciation of every word is clearly shown by respelling with phonetic signs, which are explained in the key-lines at the foot of the page.

The free use of illustrations to help in understanding the definitions is also a feature of great importance.

Condensation has been accomplished by omitting definitions of derived words (mostly adverbs, adjectives, and abstract nouns) which are self-explaining as soon as the root word is understood; and, further, such derivatives have usually been grouped in the same paragraph with the root word, where this could be done without interrupting the alphabetical order. On the other hand, care has been taken to discriminate between words of the same spelling and pronunciation, but of different etymology and meaning. For instance, Sound is a form representing *four* words of the same pronunciation but of widely different origin and sense. In older dictionaries such words appeared as *one* word with different meanings. This mode, tending to confuse or mislead the pupil, has been carefully avoided.

There is a copious Appendix, which contains a list of Biblical, Classical, Mythological, Historical, and Geographical Proper Names, combined in a single vocabulary; together with other information that does not fall within the scope of the main Vocabulary.

40 That George W. Ogilvie, in April 1905, purchased for use and not for sale and imported into this country subject to the duty thereon, one additional copy of said "Webster's Brief International Dictionary" published in London, England, under said contract between complainant and George Bell & Sons, said copy so imported being in all respects identical with the copy of said "Webster's Brief International Dictionary" accompanying and forming part of this agreed statement of facts.

(13.) That on April 17, 1905, complainant wrote to defendant, United Dictionary Company, protesting against such intended publication, and warning that the publication of the book referred to in said advertisement would be an infringement of complainant's copyright, and that on April 20th, complainant wrote to George W. Ogilvie a letter to the same effect. On April 18th, said United Dictionary Company wrote a letter to complainant acknowledging receipt of the warning and inviting a suit, and on April 22nd, said George W. Ogilvie wrote to complainant a letter of similar purport. But said United Dictionary Company ignored complainant's warning and protest. That the United Dictionary Company intends to and will, unless restrained, publish and sell said book as announced in said advertisement and circular under the name and style of "Webster's Brief International Dictionary."

(14.) That the value of the American copyright in the book entitled "Webster's High School Dictionary" exceeds Five Thousand Dollars, and that the amount in controversy in this suit exceeds, exclusive of interest and costs, the sum or value of Five Thousand Dollars.

(15.) That the exhibits referred to in this agreed statement of facts are to be considered and treated upon the hearing of this cause and upon appeal as mechanical exhibits and need not be reproduced.

Stipulation as to printing.

(16.) That pleadings and this stipulation of facts, and the exhibits therein referred to, with the evidence, if any, taken upon the question of damages and profits, shall constitute the record of this cause upon all hearings, appeals, writs of error and writs of certiorari, and that the affidavit of Orlando M. Baker shall be omitted from the record; this record, exclusive of the exhibits referred to, to be printed.

May 22, 1905.

FRANK S. REED AND
EDWARD S. ROGERS,
Solicitors for Complainant.
PEIRCE & FISHER,
Solicitors for Defendant.

41 And on to wit: the Twentieth day of December, 1905, there was filed in the clerk's office of said Court in said entitled cause a certain Opinion in words and figures following to-wit:

Opinion. Filed Dec. 20, 1905.

Opinion.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

No. 27731.

G. & C. MERRIAM CO.

v.

UNITED DICTIONARY CO.

KOHLSAAT, *J.:*

The question in this case is whether one who publishes in this country a copyrighted book, containing due notice of copyright, and who subsequently takes the plates which are made from type set within the United States, and which were used in printing said copyrighted book, to England, and there in conjunction with an other publisher publishes another edition of the book from said plates, intentionally omitting therefrom the notice of the American copyright, can maintain a suit for infringement against another who imports a copy of the English book and proceeds to reproduce the same.

The only limit for the purposes of this hearing placed upon the right of the English publisher is contained in a written contract with him to the effect that he should not import the book or sell it for the purpose of importation into the United States. No breech of this condition is asserted. Defendant imported a copy of the English publication "for use" as he states and "not for sale" for the purpose of reproducing it in the United States. So far as the record shows, this and another subsequently imported by defendant, were the only volumes of the English edition in the country. Defendant thereupon proceeded to photograph the book, and make plates therefrom in this country, and to reproduce said imported book.

42 The bill herein was filed to restrain defendant from such act. The cause is now before the Court on final hearing.

The copyright act prohibits the importation of a book not made from plates from type set in the United States, during the life of the copyright, but contains no prohibition as to a book made from type set in this country, as was the case here. In the latter case there is no restriction placed upon importation, except that imposed by the revenue act, which is not necessary here to consider. So far as disclosed in the agreed statement of facts, the two books in question were rightfully in the possession of defendant,—as much so as though complainant had in person delivered the same to it without condition. If such an act constituted a publication within the terms of Section 4962 of the Statute, which provides that no person shall maintain an action for the infringement of his copyright unless he shall give notice of his copyright by inserting in the several copies of every edition published the words prescribed by the section, then

complainant falls within the prohibition, and cannot maintain this suit. I can see no distinction in legal effect between the status of the imported book under the above circumstances, and that of a book published in this country from plates made here, which omits the requirements of notice prescribed in said section 4962.

Any person desiring to take advantage of the copyright law must follow its provisions strictly.

Wheaton *v.* Peters, 8 Peters, 593.
Thompson *v.* Hubbard, 131 U. S. 123.
Osgood *v.* Aloe Instrument Co., 83 Fed. 470.

It was held in Gottsberger *v.* Aldine Pub. Co., 33 Fed. Rep. 381, that a sale of one volume constituted a publication and came within the prohibition of the copyright statute. In the case of Larrowe-Loisette *v.* O'Loughlin *et al.*, 88 Fed. Rep., 896, the court decided that one claiming copyright could not free himself from the strict terms of the statute by disposing of or printing books in which copyright is claimed, to be used by others under a contract which bound them not to disclose the contents.

The volumes in question amounted in my opinion, to such a publication as will bar complainant from maintaining this suit. What might have been the effect if the English edition had retained the notice of copyright appearing in the American edition need
43 not be discussed. Such a notice was of no moment in England, and might, conceivably, have been deemed detrimental to the sale of the book. The equities of the situation are with complainant and it is with regret that I find myself driven to a legal conclusion which ignores them. The remedy rests with Congress and not with the courts. The bill is dismissed for want of equity.

(Endorsed:) Filed December 20, 1905, Marshall E. Sampsell, clerk.

And on the same day to-wit: the twentieth day of December being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, Circuit Judge, appears the following entry to-wit:

Decree of December 20, 1905.

In the United States Circuit Court for the Northern District of Illinois, Eastern Division.

No. 27731.

G. & C. Merriam Company
v.
United Dictionary Company.

This cause coming on to be heard upon the bill of complaint herein, the answer of the defendant, and the replication thereto, and the agreed statement of facts as embodied in the printed record filed

herein, and after due argument of counsel, and being fully advised, It Is Ordered that the bill of complaint herein be, and the same hereby is, dismissed for want of equity, and complainant having prayed an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, It Is Ordered that until said appeal is heard and determined, United Dictionary Company, its officers, agents, attorneys, employés and assigns, and all those holding under or through it, be, and the same hereby each and all are enjoined and restrained from printing, publishing or selling, copies of the
44 said book "Webster's Brief International Dictionary," or "Webster's High School Dictionary," or either of the same, and also any copy of any book containing or embodying the whole or any part of, or infringing upon the said book of complainant.

It Is Further Ordered that complainant file herein a bond in the penal sum of Ten Thousand Dollars with surety to be approved by the Court, conditioned that in the event the decree dismissing the bill be affirmed by the Circuit Court of Appeals, it will pay to the defendant such damages as may be occasioned by reason of the wrongful or improvident issuance of the injunction herein granted.

And on the same day, to-wit: the twentieth day of December, 1905, came G. & C. Merriam Company as principal and Fidelity & Deposit Company of Maryland, as surety and filed in the Clerk's office of said Court a certain Injunction Bond in the words and figures folfowing to-wit:

Injunction Bond. Filed Dec. 20, 1905.

Injunction Bond.

Know All Men By These Presents, that G. & C. Merriam Company, as Principal, and Fidelity & Deposit Company, of Maryland, as Surety, are held — firmly bound unto United Dictionary Company in the penal sum of Ten Thousand Dollars, to the payment of which they bind themselves each for itself, firmly by these presents.

Sealed with their seals, and dated this 20th day of December, 1905.

The Condition Of The Above Obligation Is Such, that whereas, G. & C. Merriam Company, a corporation organized and existing under and by virtue of the Commonwealth of Massachusetts, having filed on the Chancery side of the Circuit Court of the United States for the Eastern Division of the Northern District of Illinois a certain bill in equity against United Dictionary Company, which bill of complaint has been on final hearing dismissed for want of equity; and whereas, under an order of said Court entered the 20th day of December, 1905, an order was entered enjoining and restraining the said defendant, United Dictionary Company, its officers, agents, attorneys, employés and assigns, and all those holding under or through it, from printing, publishing or selling copies of the
45 said book "Webster's Brief International Dictionary," or "Webster's High School Dictionary," or either of the same,

and also any copy of any book containing or embodying the whole or any part of, or infringing upon the said book of complainant, pending an appeal by said G. & C. Merriam Company to the United States Circuit Court of Appeals for the Seventh Circuit and enjoining and restraining the said defendant, United Dictionary Company, its officers, agents, attorneys, employés and assigns, and all those holding under or through it, until the said appeal to the Circuit Court of Appeals for the Seventh Circuit is heard and determined.

Now, Then, in the event of the affirmance by the said Circuit Court of Appeals of the order and decree dismissing the bill of complaint herein for want of equity, said G. & C. Merriam Company shall pay all moneys and damage by reason of the wrongful or improvident issuance of said injunction, then these presents shall be void; otherwise to remain in full force.

G. & C. MERRIAM COMPANY, [SEAL.]
By FRANK S. REED &
EDWARD S. ROGERS,
Its Solicitors and Attorneys in Fact.
FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,
By ARTHUR C. ARNOLD,
[SEAL.] *Agent and Attorney in Fact.*

Approved Dec. 21, 1905.

KOHLSAAT, *J.*

(Endorsed:) Filed Dec. 20, 1905, Marshall E. Sampsell, Clerk.

And afterwards to-wit: on the twenty-first day of December, 1905, came the said G. & C. Merriam Company by its solicitors and filed in the clerk's office of said Court in said entitled cause its certain Petition for Appeal in words and figures following to-wit:

46 *Petition for Appeal. Filed Dec.* 21, 1905.

Petition for Appeal.

In the United States Circuit Court for the Northern District of Illinois, Eastern Division.

27731.

G. & C. MERRIAM COMPANY
vs.
UNITED DICTIONARY COMPANY.

Petition for Appeal.

And now comes the said G. & C. Merriam Company, by Frank F. Reed and Edward S. Rogers, its solicitors, and prays an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the said order and decree of this Circuit Court of the United

States in the above entitled cause, dismissing the bill of complaint herein for want of equity, entered to-wit: on the 20th day of December, A. D. 1905.

G. & C. MERRIAM COMPANY,
By FRANK F. REED &
EDWARD S. ROGERS, *Its Solicitors.*

(Endorsed:) Filed Dec. 21, 1905, Marshall E. Sampsell, Clerk.

And on the same day to-wit: the twenty-first day of December, 1905, came G. & C. Merriam Company, by its solicitors and filed in the clerk's office of said Court in said entitled cause its certain Assignment of Errors in the words and figures following to-wit:

47 *Assignment of Errors. Filed Dec.* 21, 1905.

Assignment of Errors.

In the United States Circuit Court for the Northern District of Illinois, Eastern Division.

27731.

G. & C. MERRIAM COMPANY
v.
UNITED DICTIONARY COMPANY.

And now comes the said G. & C. Merriam Company, by Frank F. Reed and Edward S. Rogers, its solicitors, and says that in the record and proceedings and in the entering of the order and decree aforesaid, dismissing the said bill of complaint for want of equity, there is manifest error in this

(1.) That the Court erred in dismissing the said bill of complaint for want of equity.

(2.) That the Court erred in holding that the publication of the said book referred to in said bill of complaint in the United Kingdom of Great Britain without the American notice of copyright was an abandonment and dedication of the contents of the said book to the public in the United States.

(3.) The Court erred in holding that the said publication of the said book in Great Britain without the American notice was such a publication as barred complainant from maintaining his suit.

(4.) The Court erred in holding that complainant was without relief and in denying the injunction and other relief prayed, by reason whereof the said complainant, G. & C. Merriam Company prays that the said order and decree may be reversed and that an order and decree for a perpetual injunction and an accounting as prayed for in the bill of complaint may be directed and allowed.

FRANK F. REED &
EDWARD S. ROGERS,
Solicitors for Complainant.

(Endorsed:) Filed Dec., 21, 1905, Marshall E. Sampsell, Clerk.

48 And on the same day to-wit: the twenty-first day of December, being one of the days of the December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, Circuit Judge, appears the following entry to-wit:

Order of December 21, 1905, *Allowing Appeal.*

In the United States Circuit Court for the Northern District of Illinois, Eastern Division.

27731.

G. & C. MERRIAM COMPANY
v.
UNITED DICTIONARY COMPANY.

And on this day comes G. & C. Merriam Company, complainant in the above entitled cause, and presents to the Court its petition for appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the order and decree of the Circuit Court of the United States entered in this cause on the 20th day of December, A. D. 1905, dismissing the said bill for want of equity, and also presents to the Court a bond on appeal in the sum of Five Hundred Dollars, and the Court being advised, approves the said bond and allows said appeal.

And on the same day to-wit: the twenty-first day of December, 1905, came G. & C. Merriam Company as principal and The Fidelity & Deposit Company of Maryland, as surety and filed in the clerk's office of said Court in said entitled cause a certain Bond on Appeal in words and figures following to-wit:

49 *Bond on Appeal. Filed Dec.* 21, 1905.

Bond on Appeal.

In the United States Circuit Court for the Northern District of Illinois, Eastern Division.

27731.

G. & C. MERRIAM COMPANY
v.
UNITED DICTIONARY COMPANY.

Bond on Appeal.

Know All Men By These Presents, that we, G. & C. Merriam Company, as Principal, and The Fidelity & Deposit Company of Maryland, as Surety, are held and firmly bound unto United Dictionary

Company in the full and just sum of Five Hundred Dollars ($500.00) to be paid said United Dictionary Company, its successors or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 21st day of December in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a session of the United States Circuit Court for the Northern District of Illinois, Eastern Division, in a suit depending in said Court between G. & C. Merriam Company, as complainant, and said United Dictionary Company, as defendant, an order and decree was made against the said G. & C. Merriam Company dismissing its bill of complaint in said cause for want of equity, and from which order and decree said G. & C. Merriam Company has prayed an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, and which said appeal has been allowed.

Now the Condition of the above obligation is such, that if said G. & C. Merriam Company shall prosecute its said appeal with effect and answer all costs, if it fail to make its plea good, then the above condition to be void, else to remain in full force and effect.

G. & C. MERRIAM COMPANY, [SEAL.]
By FRANK F. REED &
EDWARD S. ROGERS,
Its Solicitors & Attorneys in Fact.
FIDELITY & DEPOSIT COMPANY OF MARYLAND,
By ARTHUR C. ARNOLD,
[SEAL.] *Agent and Attorney in Fact.*

Approved:
PEIRCE & FISHER,
Solrs. for Deft.

Approved Dec. 21, 1905.

KOHLSAAT, *J.*

(Endorsed:) Filed Dec. 21, 1905, Marshall E. Sampsell, Clerk.

Certificate of Clerk.

NORTHERN DISTRICT OF ILLINOIS, *Eastern Division, ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court and made in accordance with Stipulation filed in the cause entitled G. & C. Merriam, Complainant *vs.* United Dictionary Company, Defendant, General Number 27,731, as the same appear from the original records and files of said Court now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this 21st day of December, 1905.

[SEAL.] MARSHALL E. SAMPSELL, *Clerk.*

51 *Citation. Filed Dec.* 21, 1905.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to United Dictionary Company, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an Order allowing an appeal entered and filed in the Clerk's Office of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, wherein G. & C. Merriam Company is the Appellant, and you are Appellee, to show cause, if any there be, why the Decree rendered against the said Appellant, as in said Petition mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Christian C. Kohlsaat, Judge of the Circuit Court of the United States, this 21st day of December, in the year of our Lord one thousand nine hundred and five.

KOHLSAAT, *J.*

Service accepted Dec. 21, 1905.

PEIRCE & FISHER,
Sol'c't'rs for Def't.

(Endorsed:) Circuit Court of the United States Northern District of Illinois—Eastern Division. Filed Dec. 21 1905 Marshall E. Sampsell, Clerk.

52 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 51, inclusive, contain a true copy of the printed record filed in this court on the second day of January, 1906, which was prepared for the printer, indexed, supervised and distributed by me in accordance with the rules of this court and upon which the cause was determined by the United States Circuit Court of Appeals for the Seventh Circuit, in the case of G. & C. Merriam Company, *vs.* United Dictionary Company, No. 1234, October Term, 1905, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this seventeenth day of August A. D. 1906.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

53 At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held on the third day of October, 1905, of the October Term in the year of our Lord one thousand nine hundred and five and of our Independence the one hundred and thirtieth.

And afterwards to-wit: On the twenty-seventh day of December, 1905, in the October term last aforesaid, came the appellee, by *by* its counsel Mr. George P. Fisher, Jr., and Mr. James H. Peirce, and filed in the office of the clerk of this court their appearance, which appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1905.

No. 1234.

G. & C. MERRIAM COMPANY, Appellant,
vs.
UNITED DICTIONARY COMPANY, Appellee.

The clerk will enter *my* appearance as Counsel for the Appellee.

GEORGE P. FISHER, JR.
JAS. H. PEIRCE.

Endorsed: Filed Dec. 27, 1905. Edward M. Holloway, Clerk.

54 And afterwards, to-wit: On the thirtieth day of December, 1905, in the October Term last aforesaid, came the appellant, by its counsel Mr. Frank F. Reed and Mr. Edward S. Rogers, and filed in the office of the clerk of this court its appearance, which appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1905.

No. 1234.

G. & C. MERRIAM COMPANY, Appellant,
vs.
UNITED DICTIONARY COMPANY, Appellee.

The Clerk Will enter *my* appearance as counsel for the Appellant.

FRANK F. REED AND
EDWARD S. ROGERS.

Endorsed: Filed Dec. 30, 1905. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the second day of January, 1906, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, *January* 2, 1906.

Court met pursuant to adjournment.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding. Hon. Francis E. Baker, Circuit Judge. Hon. Christian C. Kohlsaat, Circuit Judge.

55

1234.

G. & C. MERRIAM COMPANY
vs.
UNITED DICTIONARY COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the court that this cause, be, and the same is hereby set down for hearing January 16, 1906.

And afterwards, to-wit: On the sixth day of January, 1906, in the October term last aforesaid, came the appellant, by its counsel Mr. Charles N. Judson and Mr. William B. Hale, and filed in the office of the clerk of this court their appearance, which appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1905.

No. 1234.

G. & C. MERRIAM COMPANY
vs.
UNITED DICTIONARY COMPANY.

The Clerk will enter *my* appearance as Counsel for the Appellant.
CHARLES N. JUDSON.
WILLIAM B. HALE.

Endorsed: Filed Jan. 6, 1906. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the fifteenth day of January, 1906, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

56

MONDAY, *January* 15, 1906.

Court met pursuant to adjournment.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding. Hon. Francis E. Baker, Circuit Judge. Hon. Christian C. Kohlsaat, Circuit Judge. Hon. Francis M. Wright, District Judge.

Order.

It is ordered by the court that Hon. Francis M. Wright, Judge of the District Court of the United States for the Eastern District of Illinois be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Wright appeared and took his seat as a member of said court.

And afterwards, to-wit: On the sixteenth day of January, 1906, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, *January* 16, 1906.

Court met pursuant to adjournment.

Present: Hon. Peter S. Grosscup, Circuit Judge, presiding. Hon. Francis E. Baker, Circuit Judge. Hon. Francis M. Wright, District Judge.

1234.

G. & C. MERRIAM COMPANY
vs.
UNITED DICTIONARY COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

57 Now this day comes Mr. Stephen H. Olin, and moves the court that he be allowed to appear and file a brief in this cause *Amicus Curiæ*, and the court having heard the same, it is now ordered that the said motion be and the same is hereby granted.

1234.

G. & C. MERRIAM COMPANY
vs.
UNITED DICTIONARY COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral argument by Mr. William B. Hale and Mr. Frank F. Reed, counsel for appellant, and by Mr. George P. Fisher, Jr., counsel for appellee, and the court having heard the same takes this matter under advisement.

1234.

G. & C. MERRIAM COMPANY
vs.
UNITED DICTIONARY COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Upon motion of counsel it is ordered that the appellant and appellee be and are hereby allowed ten days from this date within which to file additional briefs in this cause.

And afterwards, to-wit: On the tenth day of April, 1906, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in the words and figures following, to-wit:

58 In the United States Circuit Court of Appeals for the Seventh Circuit.

No. 1234, October Term 1905, January Session 1906.

G. & C. MERRIAM COMPANY, Appellant,
vs.
UNITED DICTIONARY COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Before Grosscup and Baker, Circuit Judges, and Wright, District Judge:

This is an appeal from a final decree of the United States Circuit Court for the Northern District of Illinois, dismissing the bill of complaint of the appellant for want of equity, the case having been heard upon the pleadings and an agreed statement of facts.

The bill was filed to restrain infringement of copyright in the book entitled "Webster's High School Dictionary." The facts briefly stated are as follows:

Appellant, before the publication in this or any foreign country, was the owner of the literary property in and the right to copyright the book "Webster's High School Dictionary," and on August 9, 1892, published and copyrighted the same simultaneously in Great Britain and the United States. Thereafter appellant continued to publish and sell this book in the United States, complying with all the requirements of the statutes and printing the statutory notice of copyright in every copy published or sold in this country. The book under the name Webster's Brief International Dictionary was subsequently published commercially in England under an agree-
59 ment between appellant and George Bell & Sons entered into on July 18, 1894. This contract expressly provides that

George Bell & Sons will not either directly or indirectly sell in or import the book into the United States or sell to others for the purpose of importation, and George Bell & Sons agree to use all reasonable means to prevent such importation by others. Under this contract the book has been published and sold in England. The copies so published and sold in England by George Bell & Sons have not borne the notice of the American copyright, but have been in full compliance with all the provisions of the English copyright law, and appellant has in England a valid and subsisting copyright in the book. No copies of the English book have ever been imported into or sold in the United States either by appellant or George Bell & Sons, or any one acting for or on behalf of either. The appellee, United Dictionary Company, is an Illinois corporation organized in June, 1904, with a capital stock of fifteen hundred dollars. George W. Ogilvie, who was the organizer of defendant corporation, in January 1905, caused a newsdealer in Chicago to cable to England and procure for him a copy of Webster's Brief International Distionary. This book was received in due course and turned over to Ogilvie. This and another copy subsequently imported by Ogilvie are the only copies of Webster's Brief International Dictionary, as far as the record shows, that ever came into this country. Upon receipt of the first copy, the appellee, United Dictionary Company, of which Ogilvie is director and principal stockholder, had the pages of Webster's Brief International Dictionary photographed and reproduced verbatim and had plates made which completely reproduced that book and which also reproduced Webster's High School Dictionary except the first three and the last thirty-four pages, the remainder of the two books being identical. This reproduction was with full knowledge of the American copyright and of the identity of the books.

It is expressly stipulated that "said Ogilvie obtained said copy of said 'Webster's Brief International Dictionary,' not for the purpose of selling said individual copy, but for the purpose and intent of having the United Dictionary Company reprint and republish said book without the consent of either complainant or George Bell & Sons."

60 Appellee advertised the intended publication of its book in the Publishers' Weekly and has circulated pamphlets and printed matter in which this announcement is made. The book has not yet been published but will be unless its publication is restrained. And if published will constitute an infringement of appellant's copyright in the book "Webster's High School Dictionary," if that copyright be valid.

The question chiefly argued in this court is, whether the failure, under the circumstances of this case, to insert in the books published in England, the copyright notice required by the United States copyright law, works a forfeiture of the United States copyright, notwithstanding an exact and literal compliance with the United States statute in regard to all books published or circulated by or with the consent of appellant in the United States.

WRIGHT, *District Judge*, delivered the opinion of the Court:

Appellant's copyright of Webster's High School Dictionary was in strict conformity to law, and is unassailable in the United States unless the publication in Great Britain omitting notice of copyright as required by section 4962 Revised Statutes, deprives it of the right to maintain an action for infringement.

Appellee imported two copies of the British publication of the book for its use; that is, to reprint and republish it in this country for sale. The importation and publication is sought to be justified by appellee because the publication in England was printed from type set or plates made within the limits of the United States, and more particularly appellee's insistence is that the publication is justified because of the failure of appellant to insert in the books published in England the copyright notice required by the United States copyright law.

In support of these contentions it is argued that the only prohibition contained in the law is against the importation of books not made from plates from type set in the United States during the life of the copyright, and that the books in question having been made from plates from type set in the United States, there exists no law against the importation of them, and having been lawfully imported, and being thus properly in the United States, and containing no notice therein of a United States copyright they were legally subject to be produced by reprint or publication by any person,
61 notwithstanding the copyright of the United States edition of the book.

The prohibition against importation found in section 4956, Revised Statutes, we think was not intended to do more than its plain terms import, considered with the context of the whole section. Manifestly the object of that prohibition is to prevent from being done abroad, the work of producing copyright books designed for sale in the United States. The prohibition of that section has no application to the facts in this case. The publication of the book in Great Britain was not intended for sale in the United States. Appellant had already provided another edition of the book for sale in the United States by obtaining copyright according to law, and which was duly protected thereby. However, in the ultimate view we entertain of the question involved, we do not consider the absence of a specific prohibition in the statute against the importation of a book in the situation of appellant's English publication, as of controlling effect. The vital question is, whether protection can be afforded against infringement of the copyright appellant obtained from the United States, or whether the facts stated constitute an infringement.

If the importations of the British book were in large numbers designed for sale in the United States in competition with the domestic copyright, then the question would be not only of illegal importation but of infringement of the domestic copyright, as well, as the same now is of infringement by reproducing in this country the foreign publication.

It has been argued with force that because section 4956, Revised Statutes, provides that no person shall be entitled to a copyright unless he shall, on or before the day of publication in this or any foreign country, deliver to the Librarian of Congress a printed copy of the title of the book, and also two copies of the book not later than the day of publication thereof in this or any foreign country, that therefore, the publication of the book being, as contended, thereby authorized, the provision in section 4962 for the insertion of the copyright notice in the several copies of every edition published, has reference to the several copies of every edition wherever published, in this or any foreign country.

Appellant did comply with these requirements in obtaining its domestic copyright. The law does not require this to be done in both countries, the requirement being that the copies be delivered
62 before or on the day of publication in this or any foreign country. Appellant having fulfilled this requirement before the day of publication in this country, it had done all the law demanded in this regard. Other than this the provisions of this section relative to the deposit of copies of a publication in a foreign country, the demand for copies to be delivered to the Librarian is but supplementary to the provisions of section 4952, and should be limited to the purposes of that section, which enables authors or proprietors of a book in a foreign language to obtain copyright in this country. No provision is made in that section for a case like the one we are considering. The only reference in that section to a case like this is contained in the proviso: "That this act shall only apply to a citizen or subject of a foreign state or nation, when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as to its own citizens." By other legislation it is provided that existence of the conditions described in the proviso shall be determined by the President of the United States by proclamation from time to time, as the purposes of the law may require.

So, in the case of a domestic owner of a literary production, which is also of domestic origin and in our own language, which is the case of appellant, we find no special provision in the law for copyright abroad, but do find, in the proviso quoted, that such a case has been anticipated by legislative recognition or sanction, confirmed by executive proclamation, thus pointing out the way, if not creating the right, to citizens of the United States to obtain from foreign nations copyright benefits. Congress did not assume to give to citizens of this country the right to a foreign copyright, but doubtless did all they could do, encouraged foreign nations, who alone could grant the benefits, to do so, and in legal effect authorized citizens of this country to seek copyright benefits in foreign countries upon the conditions provided for them.

Under these circumstances appellant obtained from Great Britain a copyright of the book in question and was thus induced to publish it in England, which enabled appellee to obtain a copy for its use. So far as appears, the copyright granted by the English govern-

ment was in strict conformity to the laws of that nation.
63 Indeed, if at all, it had to be as prescribed by the law of England, for Congress had no authority to define the conditions upon which a copyright might be granted by a foreign nation. The Congress by their legislation did not assume such authority, but merely as an act of amity provided that when a foreign state or nation permits to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, then a citizen or subject of such foreign state or nation should have the privileges relative to copyright as conferred by law upon citizens of this country. The law of England does permit to citizens of this country the benefit of copyright on substantially the same basis as to its own subjects, as evidenced by the proclamation of the President of the United States.

It is true that the book so copyrighted and published in the foreign country contains no notice that a copyright exists in the United States. The law of England does not require that it should contain such notice, nor such a notice of its own copyright. The English copyright is valid in that country. It was obtained by appellant, a citizen of the United States, with both the legislative and executive invitation and sanction of its own country. Shall it now be held by the courts of the United States that because of such invitation and sanction appellant was induced to and did obtain a valid copyright in a foreign nation, it thereby invalidated the one it had obtained in its own country? We do not believe the Congress intended to have their enactments interpreted to an absurdity such as that would be. It was never intended that the notice of copyright in this country should be inserted in foreign copyright editions of the same book not designed for sale in the United States. In the case of England, if such conditions were held to have been imposed, the effect would be to burden citizens of the United States with conditions that nation had not cast on its own subjects, and this would be inconsistent with the terms of the proviso of the statute hereinbefore quoted, by means of which these reciprocal rights were effected, to the purpose that if foreign nations should permit citizens of the United States the benefit of copyright on substantially the same basis as its own citizens, then the latter should have like benefits in this country.

If appellant had inserted a notice of the American copyright in the English editions of the book, would it have been
64 true? It is plain that it would not. There can be no just pretense that the identical matter of the English edition had ever been submitted to the forms of law essential to a copyright in the United States. The title and the first three and last thirty-four pages of the English edition were different from the domestic edition. This being true, is it not evident that to have inserted such notice would have been a violation of section 4963 Revised Statutes, subjecting the offender to a penalty of $100? It is not to be imagined the law demanded a violation of itself.

An infringement may result in the wrongful use of a part as well as the whole of a publication protected by copyright. Appel-

lant rightfully published its book in England in conformity to the laws of that country, with the approval of the law of its own sovereignty, at the same time having a copyright in the United States entitled to the protection of its laws from illegal infringement. The publication by appellee of the book imported from England would be an infringement of appellant's copyright, and should be enjoined.

The decree of the Circuit Court is reversed and the cause remanded for further proceedings not inconsistent with the views herein expressed.

And afterwards, to-wit: On the seventh day of May, 1906, in the October term last aforesaid, came the appellee by its counsel Mr. James H. Pierce and Mr. George P. Fisher, Jr., and filed in the office of the clerk of this court its petition for rehearing, which petition for rehearing was, on the twenty-third day of May, 1906, overruled.

65 And afterwards, to-wit: On the tenth day of August, 1906, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

FRIDAY, *August* 10, 1906.

Court met pursuant to adjournment.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding. Hon. William H. Seaman, Circuit Judge.

1234.

G. & C. MERRIAM COMPANY, Appellant,
vs.
UNITED DICTIONARY COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of the said Circuit Court be and it hereby is reversed and the cause remanded with instruction to said Court to enter in favor of complainant a final decree for a perpetual injunction as prayed in the bill of complaint with costs in this court and in the Circuit Court, but not for an accounting of profits as defendant has not published the infringing book.

It is further ordered that a mandate issue to said Circuit Court in accordance with this decree.

66 And afterwards on the same day, to-wit: On the tenth day of August, 1906, in the October term last aforesaid, there was filed in the office of the clerk of this court a petition for appeal in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1905.

G. & C. MERRIAM COMPANY, Appellant,
vs.
UNITED DICTIONARY COMPANY, Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Petition for Appeal.

And now comes the said Appellee, United Dictionary Company, by James H. Peirce and George P. Fisher, Jr., its solicitors, and hereby prays an appeal to the Supreme Court of the United States from the order entered in this cause by the United States Circuit Court of Appeals for the Seventh Circuit on the 10th day of Aug., 1906, and prays that its appeal may be allowed; and that a transcript of the record and proceedings upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

UNITED DICTIONARY COMPANY,
By JAS. H. PEIRCE,
GEORGE P. FISHER, JR.,
Its Solicitors.

67 And now, to-wit, on the — day of ——, 1906, it is ordered that the appeal be allowed as prayed for.

P. S. GROSSCUP,
Circuit Judge Presiding in the United States Circuit Court of Appeals for the Seventh Circuit.

Endorsed: Filed Aug. 10, 1906. Edward M. Holloway, clerk.

And afterwards, on the same day, to-wit: On the tenth day of August, 1906, in the October term last aforesaid, there was filed in the office of the clerk of this court the assignment of errors in the words and figures following, to-wit:

68 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1905.

G. & C. MERRIAM COMPANY, Appellant,
vs.
UNITED DICTIONARY COMPANY, Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Assignment of Errors.

And now comes the said United Dictionary Company, by James H. Peirce and George P. Fisher, Jr., its solicitors, and says that in the record and proceedings and in the order and decree entered in this Court on the 10th day of August, 1906, there is manifest error in this:

I. That the Court erred in granting the injunction prayed for in the bill of complaint.

II. That the Court erred in deciding that the ommission of the American copyright notice from the dictionary published by or with the consent of the G. & C. Merriam Company in Great Britain did not defeat said Company's right to maintain this suit.

69 III. That the Court erred in not holding that the publication in Great Britain of the dictionary referred to in the bill of complaint without the American notice of copyright was an abandonment and dedication of the contents of the said book to the public in the United States, and, by reason thereof, complainant was barred from maintaining its suit.

IV. That the Court erred in reversing the decree of the Circuit Court.

V. That the Court erred in not ordering that the bill of complaint be dismissed with costs.

Wherefore, said United Dictionary Company prays that said order and decree may be reversed by this Honorable Court.

JAS. H. PEIRCE,
GEO. P. FISHER, JR.,
Solicitors for United Dictionary Company.

Endorsed: Filed Aug. 10, 1906. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the same day, to-wit: On the tenth day of August, 1906, in the October term last aforesaid, there was filed in the office of the clerk of this court the bond on appeal in the words and figures following, to-wit:

70 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1905.

G. & C. MERRIAM COMPANY, Appellant,
vs.
UNITED DICTIONARY COMPANY, Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Appeal Bond.

Know all men by these presents, that we, *United Dictionary Company*, as Principal, and *George A. Cameron* as Surety, are held and firmly bound unto the above named G. & C. Merriam Company in the sum of Two Hundred and Fifty Dollars ($250.00) to be paid to the said G. & C. Merriam Company, its successors or assigns, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 5th day of July in the Year of Our Lord One Thousand Nine Hundred and Six.

71 *Whereas*, lately at a session of the United States Circuit Court of Appeals for the Seventh Circuit, in a suit pending in said Court between G. & C. Merriam Company, as Complainant and Appellant and said United Dictionary Company, as Defendant and Appellee, an order and decree were made against the said United Dictionary Company, and from which order and decree said United Dictionary Company has prayed an appeal to the Supreme Court of the United States, and which said appeal has been allowed;

Now therefore, the condition of the above obligation is such that if the said United Dictionary Company shall prosecute its said appeal with effect and answer all costs, if it fail to make its plea good, then the above condition is to be void, otherwise to remain in full force and effect.

[The United Dictionary Co., Chicago, Illinois, Incorporated 1905.]

UNITED DICTIONARY COMPANY,
By GEO. W. OGILVIE, *President*.
GEORGE A. CAMERON. [SEAL.]

Approved:
FRANK F. REED &
EDWARD S. ROGERS,
Solicitors for G. & C. Merriam Company.

Approved:
P. S. GROSSCUP,
Circuit Judge.

Endorsed: Filed Aug. 10, 1906. Edward M. Holloway, Clerk.

72 And afterwards, to-wit: On the eleventh day of August, 1906, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Court met pursuant to adjournment.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding. Hon. Francis E. Baker, Circuit Judge. Hon. William H. Seaman, Circuit Judge.

1234.

G. & C. MERRIAM COMPANY
vs.
UNITED DICTIONARY COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

It is now here ordered by this court that the appeal in this cause to the Supreme Court of the United States be and the same is hereby allowed as prayed for.

73 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 20, inclusive, contain a true copy of the papers filed (except briefs of counsel and petition for rehearing) and proceedings had thereon in the United States Circuit Court of Appeals for the Seventh Circuit, in the case of G. & C. Merriam Company *vs.* United Dictionary Company, No. 1234, October Term, 1905, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this seventeenth day of August, A. D. 1906.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Endorsed on cover: File No. 20,410. U. S. circuit court appeals, 7th circuit. Term No. 129. United Dictionary Company, appellant, *vs.* G. and C. Merriam Company. Filed October 8th, 1906. File No. 20,410.

Supreme Court, U. S.
FILED
DEC 12 1907
JAMES H. McKENNEY,
Clerk.

No. 129.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1907.

UNITED DICTIONARY COMPANY,
Appellant,

vs.

G. & C. MERRIAM COMPANY,
Appellee.

BRIEF OF ARGUMENT FOR APPELLANT.

GEORGE P. FISHER, Jr.,
JAMES H. PEIRCE,
WILLIAM HENRY DENNIS,
Counsel for Appellant.

Eastman Bros., Law Printers, 231 Dearborn St., Chicago.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1907.

UNITED DICTIONARY COMPANY,
Appellant,

vs.

G. & C. MERRIAM COMPANY,
Appellee.

BRIEF OF ARGUMENT FOR APPELLANT.

Statement of Case.

This cause comes before this court on appeal from a decision of the United States Circuit Court of Appeals for the Seventh Circuit, which reversed a decree of the United States Circuit Court for the Northern District of Illinois, dismissing the bill of complaint for want of equity.

The suit was brought to restrain infringement of copyright in a book entitled "Webster's High School Dictionary."

The cause was heard upon an agreed statement of facts, the salient points of which are as follows:

(1) Appellee, a corporation organized and existing under the laws of the State of Massachusetts, as the owner of the literary property in and the right to copyright the book "Webster's High School Dictionary," before publication of such book, to wit: on August 9, 1892, in its own name published and copyrighted the same

simultaneously in Great Britain and the United States. (R. 11-12.)

(2) Thereafter appellee continued to publish and sell this book under the name "Webster's High School Dictionary" in the United States, printing the statutory notice of copyright in every edition of said book published in the United States. (R. 12.)

(3) On July 18, 1894, appellee entered into a contract with George Bell & Sons, of England, from which contract it appears that appellee was to furnish to George Bell & Sons the electrotype plates from which said book had been printed in this country, and, since 1894, the said George Bell & Sons, using such plates, have published said book under a different title, however, viz., "Webster's Brief International Dictionary." (R. 28.)

The contract between appellee and George Bell & Sons contained *inter alia* the following provisions:

(*a*) That the notice of the American copyright should be omitted from the book to be published by George Bell & Sons; and,

(*b*) That George Bell & Sons should not, either directly or indirectly, import into the United States or Canada, or sell therein, any copies of said dictionary nor sell to others for the purpose of importation, and should use all reasonable means to prevent the importation of said books by others.

(4) The dictionary printed from the American plates furnished by appellee to George Bell & Sons was published in London (pursuant to their agreement) without any copyright notice whatever, and with its title page bearing the following imprint:

"London
George Bell & Sons,
G. & C. Merriam Co., Springfield, Mass.
1895."

The record does not show what, if any, attempt was made by George Bell & Sons to prevent the importation of the English book into this country, although it is agreed that none of the copies of said book published at London have been imported into or sold in the United States by appellee or George Bell & Sons, or by anyone acting for or on behalf of either of them. (R. 29.)

(5) The English book published under the title "Webster's Brief International Dictionary," comprises 560 pages, the first three and last thirty-four pages thereof differing in various respects from the corresponding pages of the book published by appellee in this country under the name "Webster's High School Dictionary," but the intermediate pages (*i. e.*, those occurring between the first three and last thirty-four pages) are substantially identical with the corresponding pages of said "Webster's High School Dictionary." Specimens of the American book entitled "Webster's High School Dictionary" and the English book entitled "Webster's Brief International Dictionary" are attached to and form part of the agreed statement of facts. (R. 29-30.)

(6) The appellant is an Illinois corporation, of which George W. Ogilvie is president and general manager. (R. 30.) The said Ogilvie, knowing of the existence of said book "Webster's High School Dictionary," and aware of the American and English copyright notices appearing therein, in January, 1905, caused a newsdealer in Chicago to procure for him from England a copy of the said "Webster's Brief International Dictionary." At the time said Ogilvie ordered said copy of "Webster's Brief International Dictionary" he was not aware of the contents thereof, but upon the receipt of said book, about February 1, 1905, said Ogilvie discovered that said "Webster's Brief International Dictionary" was identical with said "Webster's High School Dictionary" except in the particulars above mentioned. The said Ogilvie had no knowledge of the contract existing between appellee and George Bell & Sons, but from the inscription on the title page of said "Webster's Brief International Dictionary" assumed that the book so obtained was published in England under some arrangement between appellee and said George Bell & Sons. (R. 34.)

It is agreed that said Ogilvie obtained the said copy of said "Webster's Brief International Dictionary" not for the purpose of selling said individual copy, but for the purpose, and with the intent, of having appellant reprint and publish said book without the consent

of either appellee or George Bell & Sons; that appellant thereupon caused the pages of said "Webster's Brief International Dictionary" to be photographed and reproduced *verbatim* and had plates made therefrom, reproducing said books in all parts, excepting only the names of said publishers and the place and date of publication, such reproduction being also a reproduction of "Webster's High School Dictionary," except the first three and the last thirty-four pages thereof. (R. 34.)

(7) In April, 1905, appellant advertised for sale its reproduction of said "Webster's Brief International Dictionary," but no copies of said reproduction have been actually sold or published.

(8) In April, 1905, said Ogilvie purchased, "admittedly for use and not for sale and imported into this country, subject to the duty thereon," one additional copy of said "Webster's Brief International Dictionary" published in London, England, said copy being in all respects identical with the copy which he had previously caused to be imported through a Chicago newsdealer. (R. 41.)

The Circuit Court found that the failure to inscribe the copyright notice (prescribed by Sec. 4964 of Revised Statutes) in the English edition entitled "Webster's Brief International Dictionary," which was published by and with the consent of appellee, was fatal to appellee's case. (R. 42.) A decree was thereupon entered dismissing the bill of complaint for want of equity, but appellant was enjoined from selling the alleged infringing book pending the appeal of the cause to the Circuit Court of Appeals for the Seventh Circuit. (R. 44.)

The cause having been heard by the Circuit Court of Appeals for the Seventh Circuit, the decree of the Circuit Court was reversed and the cause was remanded with instructions to said court to enter a final decree for a perpetual injunction, with costs, but without an accounting of profits, as there had been no publication of the infringing book. (R. 58.)

From this decree of the Circuit Court of Appeals the present appeal has been taken.

Errors Assigned.

The errors assigned are as follows (R. 60):

I. That the court erred in granting the injunction prayed for in the bill of complaint.

II. That the court erred in deciding that the omission of the American copyright notice from the dictionary published by and with the consent of G. & C. Merriam Co., in Great Britain, did not defeat the said company's right to maintain this suit.

III. That the court erred in not holding that the publication in Great Britain of the dictionary referred to in the bill of complaint without the American notice of copyright was an abandonment and dedication of the contents of said book to the public in the United States, and, by reason thereof, complainant was barred from maintaining its suit.

IV. That the court erred in reversing the decree of the Circuit Court.

V. That the court erred in not ordering that the bill of complaint be dismissed with costs.

Brief of Argument.

I.

The English edition of appellee's copyrighted book contains no copyright notice as required by Section 4962 of the Revised Statutes, and this suit cannot therefore be maintained.

Revised Statutes, Sec. 4962.

Callaghan v. *Myers*, 128 U. S., 617 (652).

Thompson v. *Hubbard*, 131 U. S., 123.

Higgins v. *Kuefiel*, 140 U. S., 428.

Mifflin v. *Dutton*, 190 U. S., 265.

II.

The copyright law contemplates the manufacture of books and other copyrightable articles in foreign countries. Section 4962 of

the Revised Statutes is applicable alike to all copyrighted articles, and if foreign-made copyrighted books be held exempt from the requirement of copyright notice, then an equal application of the law must exempt all other foreign-made copyrighted articles from the requirement of such notice. Such a construction of the statute would render it practically a nullity, so far at least as concerns many copyrighted articles.

III.

There is nothing in the Copyright Act to indicate any purpose on the part of Congress to exempt foreign-made books or other copyrighted articles from the provision as to copyright notice imposed on articles made in this country; hence the broad language of the statute must apply to such articles wherever made.

IV.

Foreign-made books and other copyrighted articles may be and (as the court may judicially notice) are imported into this country. The copyright notice is therefore important regardless of the place of manufacture of such articles.

V.

There is no law requiring the place of manufacture to be printed upon a copyrighted book, and the only means whereby the public can reliably determine the fact of copyright is by the notice required by law.

VI.

There are many editions of Webster's dictionaries, some copyrighted and others not, and when finding a Webster's dictionary without any copyright notice, the public has a right to assume that there is no copyright thereon.

VII.

All Webster's dictionaries are in great part the same and the copyright of one is necessarily based upon minor differences from the

others. The American edition of the Webster's dictionary here in question differs from the English edition as to its first three and last thirty-four pages, and the public has a right to assume that the American copyright is predicated on such differences and that the English edition is therefore not subject of copyright.

VIII.

Appellee, by copyrighting a Webster's dictionary under the title "Webster's High School Dictionary," and, thereafter, publishing or consenting to the publication of a Webster's dictionary differing materially therefrom and under the radically different title of "Webster's Brief International Dictionary," has set a trap for the American publisher and should not be heard to complain if the latter book is imported into and republished in this country.

Mifflin v. *R. H. White Co.*, 197 U. S., 260.

IX.

The importation of foreign-made books and other copyrighted articles is regulated but not prohibited by statute, and there are various ways whereby books and other copyrighted articles may be lawfully imported.

Revised Statutes, Section 4956.

X.

The collectors of customs are guided entirely by the titles furnished them by the Librarian of Congress, and inasmuch as the English edition of appellee's book bears a different title from that entered in the Library of Congress, the collectors of customs could not check the importation of the English book nor could the public by inquiry at the Library of Congress ascertain if the English book be copyrighted.

XI.

Section 4962 of the Revised Statutes is not a penal statute nor a *quasi* penal statute.

Huntington v. *Attril*, 146 U. S., 657.

Brady v. *Daly*, 175 U. S., 148.
Bolles v. *Outing Co.*, 175 U. S., 262.

XII.

The application of Section 4962 to copyrighted books published abroad does not require any extra-territorial operation of the statute. Section 4962 simply prescribes a condition for the benefit of the public with which citizens and aliens alike must comply before they can avail themselves of the privileges conferred by the statute. If the copyright notice may be omitted from foreign-made books and foreign-made copyrighted articles, then with equal force it may be urged that the provision of the Patent Act as to the marking of patented articles and the provision of the Trade-mark Act as to the notice of registration do not apply in case of foreign manufactures.

XIII.

The requirements of a public statute cannot be evaded by a private agreement, and hence the contract between appellee and George Bell & Sons cannot relieve appellee from the obligation of complying with the provision of the statute as to the printing of the copyright notice in the several copies of every edition of its book published.

XIV.

The agreement between appellee and George Bell & Sons as to the importation of the English edition into this country was one with which the public had no concern and which might at any time have been modified by the parties to it. The authorities are conclusive in showing that the public cannot be affected by such agreement.

Jeweler's Mer. Agency v. *Jeweler's Pub. Co.*, 155 N. Y., 241.
Publishing Co. v. *Smythe*, 27 Fed. Rep., 914.
Harrison v. *Maynard Maryland Co.*, 61 Fed. Rep., 689.
Bobbs-Merrill Co. v. *Straus*, 147 Fed. Rep., 15.

XV.

The fact that appellant was aware of the existence of the American copyright on the book in question cannot prevent appellant from availing itself of appellee's failure to comply with the requirement of the statute with respect to the insertion of the copyright notice in the several copies of every edition published.

Thompson v. *Hubbard*, 131 U. S., 123.

XVI.

Appellee, owning both the English and American copyrights, has at all times been in position to control the English edition of its copyrighted book and to enforce the printing of the copyright notice therein, but instead of enforcing the printing of such notice, it specifically consented to its absence from the English edition. This clearly distinguishes the case at bar from one in which an unauthorized edition has been published without copyright notice.

XVII.

The fact that appellee did not intend that the edition of his book should be imported into or sold in this country is of no moment, as the plain provisions of a statute cannot be evaded by any design or intention that may exist in the mind of the owner of the copyright with respect to the use to be made of his book.

Holmes v. *Hearst*, 174 U. S., 82 (89).

Mifflin v. *White Co.*, 190 U. S., 260 (264).

XVIII.

The Court of Appeals was plainly in error in assuming that the marking of the American copyright notice in the English book would have been a violation of the Section 4963 of the Revised Statutes, because if the English edition was covered by the American copyright, it was entitled to bear the notice, whereas, if it was not covered by the copyright, appellant who has copied such book can not be charged with infringement.

Argument.

The single question presented by this appeal is:

Does the statute require insertion of the copyright notice in editions of a book published abroad by and with the consent of the owner of the American copyright on such book?

Copyright, which is the exclusive privilege of multiplying copies after publication, is the creature of statute, and in this country it exists by virtue of Sect. 4952 of the Revised Statutes.*

The statute provides certain conditions prerequisite to the grant and enforcement of the copyright privilege. These conditions may be summarized as follows, viz.: (1) the deposit in the Library of

* "SEC. 4952: The author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and the executors, administrators, or assigns of any such person shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others. And authors or their assigns shall have exclusive right to dramatize or translate any of their works, for which copyright shall have been obtained under the laws of the United States.

"Whenever the author or proprietor of a book in a foreign language, which shall be published in a foreign country before the day of publication in this country, or his executors, administrators or assigns, shall deposit one complete copy of the same, including all maps and other illustrations in the Library of Congress, Washington, District of Columbia, within thirty days after the first publication of such book in a foreign country, and shall insert in such copy, and in all copies of such book sold or distributed in the United States, on the title page or the page immediately following, a notice of the reservation of copyright in the name of the proprietor, together with the true date of first publication of such book, in the following words: 'Published.....nineteen hundred and..... Privilege of copyright in the United States reserved under the act approved March third, nineteen hundred and five, by.....' and shall within twelve months after the first publication of such book in a foreign country, file the title of such book and deposit two copies of it in the original language or, at his option, of a translation of it in the English language, printed from type set within the limits of the United States, or from plates made therefrom, containing a notice of copyright, as provided by the copyright laws now in force, he and they shall have during the term of twenty-eight years from the date of recording the title of the book or of the English translation of it, as provided for above, the sole liberty of printing, reprinting, publishing, vending, translating and dramatizing the said book: Provided, That this act shall only apply to a citizen or subject of a foreign State or nation when such foreign State or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as to its own citizens."

Congress, before publication, of a printed copy of the title of the book; (2) the deposit of a copy of the book within three months after publication; and (3) the giving of information of the copyright by the insertion of a notice on the title page or the next succeeding page. The first two of these conditions are prescribed by Sect. 4956 of the Revised Statutes.*

The law with respect to the giving of notice of copyright is expressed in Sect. 4962 of the Revised Statutes, which reads as follows:

> "SEC. 4962: No person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title-page, or the page immediately following, if it be a

* "SEC. 4956: No person shall be entitled to a copyright unless he shall, on or before the day of publication, in this or any foreign country, deliver at the office of the Librarian of Congress, or deposit in the mail within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo, or a description of the painting, drawing, statue, statuary, or a model or design, for a work of the fine arts, for which he desires a copyright; nor unless he shall also, not later than the day of the publication thereof, in this or any foreign country, deliver at the office of the Librarian of Congress, at Washington, District of Columbia, or deposit in the mail, within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, two copies of such copyright book, map, chart, dramatic or musical composition, engraving, chromo, cut, print, or photograph, or in case of a painting, drawing, statue, statuary, model or design for a work of the fine arts a photograph of the same: Provided, That in the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above, shall be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives, or drawings on stone made within the limits of the United States, or from transfers made therefrom. During the existence of such copyright the importation into the United States of any book, chromo, lithograph, or photograph, so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives, or drawings on stone made within the limits of the United States, shall be, and is hereby prohibited, except in the cases specified in paragraphs 512 to 516, inclusive, in section two of the act entitled, an act to reduce the revenue and equalize the duties on imports and for other purposes, approved October 1, 1890; and except in the case of persons purchasing for use and not for sale, who import subject to the duty thereon, not more than two copies of such book at any one time, and, except in the case of newspapers and magazines, not containing in whole or in part matter copyrighted under the provisions of this act, unauthorized by the author, which are hereby exempted from prohibition of importation:

"Provided, nevertheless, That in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translation of the same, and the importation of the books in the original language shall be permitted."

book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some visible portion thereof, or of the substance on which the same shall be mounted, the following words, viz.: 'Entered according to act of Congress, in the year ——, by A. B., in the office of the Librarian of Congress, at Washington;' or, at his option, the word 'Copyright,' together with the year the copyright was entered, and the name of the party by whom it was taken out, thus: 'Copyright, 18—, by A. B.'

"That manufacturers of designs for molded decorative articles, tiles, plaques, or articles of pottery or metal subject to copyright may put the copyright mark prescribed by section forty-nine hundred and sixty-two of the Revised Statutes, and acts additional thereto, upon the back or bottom of such articles, or in such other place upon them as it has heretofore been usual for manufacturers of such articles to employ for the placing of manufacturers, merchants, and trademarks thereon."

In *Callaghan* v. *Myers*, 128 U. S., 617 (652), this court said:

"Undoubtedly, the three conditions prescribed by the statute, namely, the deposit before publication of the printed copy of the title of the book, the giving of information of the copyright by the insertion of the notice on the title-page or the next page, and the depositing of a copy of the book within three months after the publication, are conditions precedent to the perfection of the copyright. *Wheaton* v. *Peters*, 8 Pet., 591; *Merrell* v. *Tice*, 104 U. S., 557."

Again, in *Thompson* v. *Hubbard*, 131 U. S., 123, this court, in speaking with respect to Sect. 4962 of the Revised Statutes, said:

"It is very clear that Hubbard, as the proprietor of the copyright, was bound to give the statutory notice in the several copies of every edition published by him, and that he did not do so. The plain declaration of the statute is, that no person shall maintain an action for the infringement of *his* copyright, unless he shall give notice thereof by inserting the prescribed words in the several copies of every edition published. That means, every edition which he, as controlling the publication, publishes. His failure to give such notice debars him from maintaining an action for the infringement of *his* copyright,

The word 'action' means an action either at law or in equity. . . .

" Section 5 of the act of February 3, 1831, c. 16, 4 Stat. 437, declared that no person should be entitled to the benefit of that act, unless he should insert the prescribed words in the published copies of the book. In section 97 of the act of July 8, 1870, c. 230, 16 Stat. 214, now section 4962 of the Revised Statutes, the language of section 5 of the act of 1831 was changed so as to declare that no person should maintain an action for the infringement of his copyright, unless he should insert in the several published copies the notice prescribed. This requirement of giving the prescribed notice has always been held, under all of the statutes, to be one of the conditions precedent to the perfection of the copyright, the other two being the deposit, before publication of the printed copy of the title, and the depositing in the public office, within the prescribed time after publication, of a copy or copies of the book. *Wheaton* v. *Peters*, 8 Pet. 591; *Merrell* v. *Tice*, 104 U. S. 557; *Callaghan* v. *Myers*, 128 U. S., 617, 652. . . .

" It is not enough that Thompson, while he owned the copyright, gave the required notice in the copies of every edition he published, while it was *his* copyright. The inhibition of the statute extended to and operated upon Hubbard while he owned the copyright, in respect to the copies of every edition which he published, and for his failure he is debarred from maintaining his action.

" The view is urged, that the only object of the notice required by the statute is to give notice of the copyright to the public; and that, as Thompson himself took the copyright, and had vested the title to it in Hubbard, he has no right to infringe the copyright, although it may be invalid as to the rest of the world. But we are of opinion that the failure of Hubbard to comply with the statute operated to prevent his right of action against Thompson from coming into existence. This right of action, as well as the copyright itself, is wholly statutory, and the means of securing any right of action in Hubbard are only those prescribed by Congress. *Wheaton* v. *Peters*, 8 Pet. 591, 662, 663; *Banks* v. *Manchester*, 128 U. S. 244, 252."

Higgins v. *Knoffel*, 140 U. S., 428.

Mifflin v. *Dutton*, 190 U. S., 265.

In many of the reported cases suits failed not because of the absence of *a* copyright notice, but because of the failure to print *the*

copyright notice required by law. In the case at bar, the English edition of appellee's book was published with appellee's consent (and in legal intent by appellee itself, as its name appears upon the imprint on the title-page), and the omission of *all* copyright notice from this English book was specifically agreed to by appellee. Under this state of facts we submit that there has been a failure upon the part of appellee to comply with the requirements of the law, and that, therefore, this suit cannot be maintained.

It will be seen that Sect. 4962 of the Revised Statutes prescribes the giving of a copyright notice with respect not merely to books, but to all copyrighted articles, and it follows, therefore, that whatever construction be given to this section of the statute must be applicable to all copyrightable subject-matter.

Sect. 4962, which provides for the copyright notice, contains no language excepting from its provisions books published in foreign countries, or copyrighted articles manufactured abroad. It follows, therefore, that this section of the statute applies to all books or like copyrighted articles regardless of the country in which they may be published or made.

Not only does the plain reading of Sect. 4962 clearly apply to all copyrighted articles, regardless of the country in which they may be produced, but we submit that a consideration of this section in connection with other sections of the same Act makes plain that it was the legislative intent to require that copyrighted books or other articles, whether produced in this or in foreign countries, should alike bear the copyright notice.

Section 4956 of the Revised Statutes specifically provides "that no person shall be entitled to a copyright unless he shall on or before the day of publication *in this or any foreign country*, deliver to the office of the Librarian of Congress" a printed copy of the title of his book; and the same section further provides as a prerequisite to a valid copyright, that he shall deliver to the Librarian of Congress two copies of the book "not later than the day of publication thereof *in this or any foreign country*." The statute thus makes plain the fact that the author may publish his book either here or

abroad. The very purpose of the present Copyright Act being to give to foreigners the benefits of our laws, it would be absurd to assume that Congress intended to enforce the manufacture in this country of all copyrighted articles or to prevent the foreigner from manufacturing in his home country. Had any such intention existed it would certainly have found expression in the statute. Manifestly, therefore, Section 4962 of the Revised Statutes, which provides for the insertion of the copyright notice "in the several copies of every edition published" has reference to the several copies of every edition published wherever the preceding section of the statute specifically provides that they may be published, *i. e.*, "*in this or any foreign country.*"

It will not be denied that under the law appellee is free to publish its dictionary in any country that it may elect. If any reason, such as exorbitant printer's charges, or unendurable regulations of the printers' or pressmen's unions in this country, should cause appellee to print and publish its book abroad, certainly no one would challenge its right to do so, and, having elected to do so, it would not be in position to say that the American copyright notice might be omitted from such book. Or, to look at the question from another point of view, suppose that appellee, for some reason, such, for example, as the destruction of its plant or the like, should see fit to confine temporarily the printing and publication of its book to "Webster's Brief International Dictionary," as put forth in London by itself and George Bell & Sons, and under the circumstances should annul that part of the contract with Bell & Sons regarding the importation of the book into this country. Could it then be said that appellee would be relieved from marking such books with the American copyright notice? Can the requirements of a public law be thus evaded by a private agreement?

The court will readily see that under some circumstances a foreign author, or even an American author, might find it desirable to publish his book abroad, and that with respect to other copyrightable articles, their manufacture abroad might certainly be preferable. Thus a Canadian author, having had his stereotype plates made

from type set in this country, might find it more economical to print his book at home and supply the American demand from there. Or, if a book were to have a particularly ornamental binding, the publisher might prefer to avail himself of the superior skill of the French binderies. Again, the French artist might find it preferable to supply the demand for copies of his painting from France; or it might prove more advantageous for the Italian sculptor to supply the American demand by reproductions made in Italy. Certainly none of these cases are improbable ones, and yet in all of them the requirement of the Copyright Act with respect to the marking of the copyright notice must be a dead letter if appellee's contention in the present case is a correct one.

Prior to the so-called International Copyright Act of March 3, 1891, aliens were not entitled to the benefits of our copyright law. The main purpose of this Act was to extend to aliens such benefits, and Congress unquestionably recognized the fact that they might, and no doubt frequently would, effect the publication of their books or the manufacture of their copyrighted articles in their home countries. If, therefore, the provisions of Section 4962 of the Copyright Act are to be held to apply to copyrighted books or other articles published or manufactured in this country only, then manifestly the law exacts from our own citizens a requirement to which aliens are not subject. Is it conceivable that it was the purpose of Congress to thus impose upon the American citizen, publishing or manufacturing in this country, an obligation from which the alien was exempt?

So, also, Section 4956 shows that the Act was designed to apply to books published abroad because it specifically provides that if publication be made abroad, the importation of the books into the United States shall be prohibited (with certain exceptions noted) unless they are printed from type set in this country. The very fact that Congress thus required that every copyrighted book should be printed from type set within the United States shows that the legislators had in mind the fact that publication might be made abroad, and if there had been any purpose to so discriminate in favor of the

foreign publisher as to relieve him from the obligation of inserting in his books the statutory copyright notice, certainly the law would not have been silent upon this point.

Even under the law as it existed prior to March 3, 1891, when the words "in this or any foreign country," as defining the place of publication, did not appear, it was recognized by the authorities that the place in which the author elected to publish his book was immaterial. Thus, in Drone on Copyright, p. 295, it is said:

> "The statute of the United States does not expressly prescribe that the first publication of a book entitled to copyright shall be in this country. Nor has this point been directly adjudicated, although it is settled that no copyright can be obtained for a book unless a printed copy of the title-page shall be deposited before publication, and two copies of the book delivered within ten days after publication. But there can be no doubt that the proper construction of the act is the same as that given to the English statutes, and that an author forfeits his claim to copyright in this country by a first, but not by a contemporaneous, publication of his work abroad.
>
> "A publication, to defeat the author's claim to copyright, must be one which has been made by his authority or with his consent."

And in Drone on Copyright, p. 577, it is said:

> "When a dramatic composition is published in print by authority, all common law rights in it are lost. The composition becomes public property, unless a valid copyright is secured under the statute. And this is equally true whether the publication be made in one country or another; whether in the United States or in Europe."

In *Boucicault* v. *Wood*, Fed. Cas. No. 1693, the question as to the materiality of the place of publication of certain dramatic compositions was presented to his Honor, Judge Drummond, who there said:

> "There is evidence tending to show that these two plays were published, that is printed, and that this publication was made in England. I do not think that would make any difference as to the right of the plaintiff, unless that publication was with the consent of the plaintiff. . . .
>
> "The fact that the two unpublished plays, after having been

> entered here, were published in England, would make no difference, unless that publication was with the consent of the plaintiff. No one would have the right to import and use them. Such consent, however, would be an abandonment of his rights, under our laws, and place him simply in the position of an ordinary English dramatist, who had published his plays in his own country; but this consent must be affirmatively proved."

In the "Mikado" case, 25 Fed. Rep., 183, Wallace, J., said:

> "Common-law rights of authors run only to the time of the publication of their manuscripts with their consent. After that the right of multiplying copies, and, in the case of a drammatic work, of representation on the stage, by the rule of the common law is abandoned to the public. It is immaterial whether the publication be made in one country or another."

The same reasoning that has led the courts to hold that the word "publication" as used in the earlier statute, *i. e.*, the Act of June 18, 1874 (where it was not qualified by the words "in this or any foreign country" that appear in Section 4956 of the Revised Statutes), must, we submit, inevitably lead to a like construction of the language of Section 4962 of the Revised Statutes.

In short, it is apparent from the whole copyright act that Congress intended that its obligations should be co-extensive with its benefits, and should apply alike to citizens of this country and to foreigners, regardless of the place elected by either for the publication of their books or the manufacture of their copyrighted articles.

In the foregoing respect the history of the copyright statute is similar to that of the patent statute. In the Patent Act of Feb. 21, 1793, which limited patent rights to citizens of the United States, it was provided that an invention to be patentable must not have been known or used before the inventor's application. In the amended Patent Act of April 17, 1830, which extended the patent privileges to aliens, it was specifically stated that the invention or discovery must not have been known or used "either in this or in any foreign country." But this court, in *Shaw* v. *Cooper*, 7 Peters, 292, held, with respect to both of these statutes, that a

knowledge or use, whether in this or in any foreign country, was equally fatal to the validity of the patent.

It might have been urged, and doubtless was urged, with respect to the earlier Patent Act, that prior knowledge and use, to work a forfeiture of a patent, should have been within the United States, because a knowledge or use abroad might not be accessible to persons in this country. And such may have been the reason why Congress, when it came to amend the act, provided specifically that knowledge and use must be within the United States. But the history of the Patent Act shows that when Congress designated publications as anticipations of inventions, it saw that a description of an invention, wherever published, was accessible to the American public, and, therefore, declared it to be a bar to the inventor's claim, regardless of the country of publication.

It is true that Sect. 4886 of the Revised Statutes, which provides in general terms that the public use or sale of an invention two years prior to the application for patent, shall render the patent invalid, has been held by the courts to mean only a public use within this country; but in every case in which such question has been presented to the courts, their decisions have made plain the fact that a limited construction was given to this section of the Patent Act because of other provisions of the same statute which showed beyond shadow of doubt that Congress intended that a prior public use in order to defeat a patent must have been within this country. This is made plain from the reading of the decision of this court in the case of *Gandy* v. *Belting Co.*, 143 U. S., 592. In Curtis on Patents, paragraph 98, the learned author, in considering this very question, says:

> "Had the phrase 'not known or used by others before his or their invention or discovery' as used in the 4th Section of the Act, been left without qualification by any subsequent clause or clauses, the novelty required for an invention *must have been absolute as to all countries.*"

The court will search in vain through the existing copyright laws to find any clause or clauses that can give a restricted mean-

ing to the plain and unequivocal language of Sect. 4962 of the Revised Statutes which is broad enough to require that the notice of copyright shall appear "in the several copies of every edition published" without limitation as to the country wherein the publication is effected. On the contrary, we submit that a consideration of the other sections of the copyright statute conclusively shows that the court would be warranted in reading into Sect. 4962 the words "in this or any foreign country," if such words could add anything to the scope and meaning of such section.

It was urged by counsel for appellee, in the lower courts, that the notice of the American copyright would be both useless and meaningless if printed in books published abroad, and from this it was argued that Congress could not have intended that the American copyright notice should appear in such books. Whether or not the copyright notice is meaningless to the reader of a book in a foreign country, or to one who there sees or purchases an article that has been copyrighted here, such notice is neither meaningless nor useless when the book or other copyrighted article is brought to this country, and it is to the American public that the notice of copyright is primarily addressed.

The Copyright Act of March 3, 1891, protects not only books, but many other articles such as paintings, photographs, statuary, decorative articles, tiles, plaques, pottery, etc., and Sect. 4962, as amended Aug. 1, 1882, prescribes specifically the manner in which the copyright notice shall be placed upon such articles and is applicable to all. It is a matter of common knowledge that a vast number of books and many other articles copyrighted in this country are published or manufactured abroad as well as here, and that such foreign made books or articles are constantly being brought into this country. Hence, it is that, even if the copyright notice be meaningless and useless so long as the book or article remains abroad, the very moment that publication occurs here, the copyright notice serves its function.

According to the contention of counsel for appellee, a publishing house putting forth both an American and English edition of

a book copyrighted here (as is constantly done), may mark the copyright notice in the American book and omit it altogether from the English edition. The English edition, published in vast numbers, perhaps, goes into the hands of wholesale and retail dealers. What, obviously, would happen if the American plates were destroyed and if the American edition of such a book were exhausted at the height of its demand? The English dealers who had purchased such book could fill the orders from individuals in this country and in this way many hundreds of copies of the copyrighted book might find their way into this country and into general circulation.

The purpose of the copyright notice required by Sect. 4962 is to inform the public what is and what is not copyrighted. That this purpose cannot be accomplished, if the decision of the Court of Appeals in this case is correct, must be apparent, we think, from the following consideration:

In the case at bar, for example, the public finds two dictionaries bearing entirely different titles, one being designated "Webster's High School Dictionary" and the other "Webster's Brief International Dictionary." These books differ in the subject-matter of their first three and last thirty-four pages. These differences in the two books would obviously permit one to be copyrighted, even if the other be public property. The public finds both books published by the same concern and finds that one bears the copyright notice while the other does not. Under these circumstances, the public has a right to assume that the copyright of the book which bears the notice is predicated upon its difference from the other book that bears no such notice, and that such other book, therefore, stands without copyright protection.

The court may judicially notice the fact that there are many editions of Webster's dictionary in existence, some of which are the subject of copyright, and upon others of which the copyrights have long since expired. (*Merriam* v. *Holloway Pub. Co.*, 43 Fed. Rep., 450; *Merriam* v. *Famous Shoe & Clothing Co.*, 47 Fed. Rep., 411; *Merriam* v. *Texas Siftings Pub. Co.*, 49 Fed.

Rep., 944; *Ogilvie* v. *G. & C. Merriam Co.*, 149 Fed. Rep., 858.) This is an added reason why the public may fairly assume that any edition of Webster's dictionary, bearing no copyright notice, belongs to that class upon which no copyright exists.

Again, if it be held that Sect. 4962 does not require the copyright notice to be inserted in books published abroad, then the equal application of this section of the statute must require that such copyright notice need not be placed upon other copyrighted articles manufactured abroad. This is an important consideration because, as the court may judicially notice, many articles such as musical compositions, engravings, photographs, paintings, chromos, statuary, plaques, tiles, articles of pottery and the like are largely imported into this country from abroad. The sweeping effect of the decision of the Court of Appeals in this case is to exempt from the requirement of Sect. 4962 all copyrighted articles manufactured abroad. Such a construction of the statute must, we submit, defeat its obvious purpose.

Not only does Sec. 4962 of the Revised Statutes require the notice of copyright to be applied to the various copyrightable articles enumerated in the statute, but this section also applies to prints or labels designed to be used upon articles of manufacture and which, under the Act of June 18, 1874 (18 Stat. L., p. 78), are registrable in the Patent Office. This court, in *Higgins* v. *Keuffel*, 140 U. S., 428, held that in order to maintain an action for infringement of a label registered under the provisions of the Act of June 18, 1874, it is necessary that the public notice of registration should have been given by fixing the word "Copyright" upon every copy of it. The law relative to the registration of prints and labels is applicable to citizens and aliens alike, and, obviously, alien manufacturers will have their labels printed or published abroad, where the articles to which they are to be attached are manufactured. If appellee's view of the law is correct, then prints and labels published abroad need not bear the statutory copyright notice. The practical result of such a construction of the statute would be to exempt foreign registrants of prints and labels from marking the same with the

statutory notice, and to impose upon citizens of this country the burden of marking the copyright notice. Surely this would be a most unequal application of the law, and one not contemplated by Congress.

Section 4971 of the Revised Statutes, which was repealed by the Act of March 3, 1891, read as follows:

> "Nothing in this chapter shall be construed to prohibit the printing, publishing, importation, or sale of any book, map, chart, dramatic or musical composition, print, cut, engraving or photograph, written, composed or made by any person not a citizen of the United States nor a resident therein."

Not only did the law prior to March 3, 1891, thus specifically authorize the publication in this country of books of foreign authors, but the court may judicially notice the fact that from time out of mind it has been the common practice of American publishers to reprint in this country foreign works, and more particularly such works published in the English language. This we submit is an added reason why American publishers, following this long established practice of reprinting foreign books, should receive notice *from such books* whether or not they are protected by an American copyright. How else can the American publisher know whether or not the foreign book is free for him to publish?

The ordinary American publisher might reasonably suppose that original books of value, published in this country, would be protected by American copyright, and naturally, therefore, when seeking for a book free from the American copyright, he would look to foreign countries—and more particularly to England and Canada. It would certainly seem to require no argument to satisfy this court that the notice of copyright should be given so that it would inevitably reach the intending publisher, particularly when looking for material in the very field in which time out of mind he has been allowed to gather material that he could freely republish. The purpose of Section 4962 is to safeguard the American publisher. And we submit that this purpose cannot be effected in any other way than by requiring that the notice of copyright shall appear, as the law spe-

cifically states it must appear, "in the several copies of every edition published," regardless of the country in which such publication occurs.

The laws of the United States, unlike the copyright laws of some other countries, do not require the publisher's name to appear upon the imprint of the book; and the means provided by law whereby the public may determine when or by whom the book is copyrighted, if at all, is the notice specifically prescribed by Section 4962 of the Revised Statutes.

Let us assume that a book first copyrighted in this country, is published in England without the copyright notice, and under a title and with an imprint different from that appearing in the American book. An American publisher sees this book, either in England or in this country, and desires to publish it here. Where does he find a single word of warning to prevent him doing this? There is no notice of copyright whatever, so that the statutory means of determining whether or not the book is copyrighted is totally lacking. The title of a book, for example, "Webster's Brief International Dictionary," may be different from the title registered in the Library of Congress, viz., "Webster's High School Dictionary;" so that if he were to ask the Librarian of Congress if "Webster's Brief International Dictionary" had been registered, he would certainly receive a negative answer. It is a matter of common knowledge, which the court may judicially notice, that there have been many editions of Webster's Dictionaries, so that the mere appearance of the name "Webster" would give to the intending publisher no clue as to the existence of the copyright.

The public has absolutely no way of knowing that appellee's book, "Webster's Brief International Dictionary," is the subject of an American copyright. So far as this book is concerned, appellee has made no attempt to comply with the statutory requirements, either by the registry of the title "Webster's Brief International Dictionary" or by the deposit of any copies of the book, as required by law. The public cannot ascertain, therefore, either from the book itself or from the Office of the Librarian of Congress, whether

or not a copyright exists thereon. In *Mifflin* v. *R. H. White Co.*, 190 U. S., 260 (264), this court said:

> "The object of the notice being to warn the public against the republication of a certain book by a certain author or proprietor, it is difficult to see how a person reading these notices would understand that they were intended for the protection of the same work. On their face they would seem to be designed for entirely different purposes. While owing to the great reputation of the work and the fame of its author, we might infer in this particular case that no publisher was actually led to believe that the book copyrighted by Dr. Holmes was not the same work which had appeared in the Atlantic Monthly, that would be an unsafe criterion to apply to a work of less celebrity. It might well be that a book not copyrighted or insufficiently copyrighted by the author might be republished by another in total ignorance of the fact that it had previously appeared serially in a copyrighted magazine. It is incorrect to say that any form of notice is good which calls attention to the person of whom inquiry can be made and information obtained, since the right being purely statutory, the public may justly demand that the person claiming a monopoly of publication shall pursue, in substance at least, the statutory method of securing it. *Thompson* v. *Hubbard*, 131 U. S., 123. In determining whether a notice of copyright is misleading, we are not bound to look beyond the face of the notice, and inquire whether under the facts of the particular case it is reasonable to suppose an intelligent person could actually have been misled."

Plainly, therefore, if an authorized edition of a book protected by an American copyright is published in England, as appellee's book was, without the statutory notice, and particularly if, as in the case at bar, such book is published under a different title from that registered in the Library of Congress, the object of the statute in requiring the insertion of a copyright notice is totally defeated.

Section 4956 of the Copyright Act makes unlawful the importation under certain conditions of books copyrighted in this country but published abroad, and it is provided by Section 4958 that collectors of customs of the United States and postmasters receiving foreign mails shall be furnished with lists of titles of all copyrighted books and other articles. If, as in the case at bar, a book be im-

ported bearing no copyright notice and having a title different from the title registered in the Library of Congress, and furnished to the collectors of customs, how would it be possible for the collectors of customs to determine whether or not the book was copyrighted?

Treasury decision No. 11,617 of August 11, 1891, declares that:

> "Collectors of customs are entirely guided by the official lists furnished this department by the Librarian of Congress as provided in Section 4 of the Act of March 4, 1891."

Where the owner of an American copyright has, as in the case at bar, not only omitted from the book published abroad by him or with his consent, the statutory copyright notice, but has also so changed the title of the book from that registered in the Library of Congress that the customs officer cannot check its importation, he has simply laid a trap for the American publisher looking for material free from copyright and should not be heard to complain if the book is freely imported into this country and republished here.

The court very well knows that the libraries of this country are composed very largely of books published abroad, and that in the book stores throughout the country we constantly find in vast numbers books of foreign publication. The American publisher seeing a desirable book published abroad by well-known publishers—such, for example, as appellee and George Bell & Sons—and finding in such book no notice of American copyright, has a right to assume that it is an authorized edition and that for reasons sufficient to themselves such publishers have secured no American copyright.

As to some of the articles named in Section 4962, notably paintings, statuary, decorative articles, tiles, plaques, and articles of pottery, there is no provision in the law prohibiting importation, although Section 4965 provides that if they be imported "*contrary to the provisions of this act* and without the consent of the owner of the copyright first obtained in writing, etc.," a fine or forfeiture shall occur. The court will readily see that if the foreign manufacturer of such copyrighted articles is exempt from placing the copyright notice upon them in his home country, they may be brought to this country by innocent purchasers, ignorant of the fact of copy-

right. Certainly it would be unfair to such purchasers to inflict them with the penalty imposed by Section 4965, as it would be unfair also to make liable any one who might in this country reproduce such copyrighted articles innocently imported without the statutory notice.

Again it will be noticed that Section 4964 of the statute which provides for the forfeiture in favor of the owner of the copyright, where a copyrightable article has been imported "contrary to the provisions of this act, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing and signed in the presence of two or more witnesses," does not require that the "consent in writing" shall be inscribed upon the painting or statue, or like article. Hence, if any one should purchase a copyrighted article so imported, he might very reasonably suppose that the importation had been with the written consent of the owner of the copyright, if the law in fact imposed such condition. When the court considers the vast numbers of copyrighted books and other articles that are constantly being imported, it will readily see that it could not have been the intent of Congress to hamper the transaction of business by requiring each article to be accompanied by a bill of sale signed by the owner of the copyright and witnessed by two or more persons.

It was argued at great length by counsel for appellee that Section 4962 of the Revised Statutes, which provides that "no person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published" the copyright notice, is of a penal character and can have no extraterritorial operation; and that therefore the act of publishing, referred to in this section of the statute, must be construed to mean publishing within the United States only.

We submit that Section 4962 is neither penal nor is it of such quasi-penal character as to call for a strict rule of construction applicable to penal statutes. In *Huntington* v. *Attril*, 146 U. S., 657, this court has made plain the distinction between statutes that are and those that are not of penal character. And this distinction is

apparent also from the language of the court in *Brady* v. *Daly*, 175 U. S., 148, and *Bolles* v. *Outing Co.*, 175 U. S., 262. Sec. 4962 provides no penalty or forfeiture in favor of, or recoverable by, the Government or any person. It simply names a condition to be observed by one class of favored persons in order that they may hold, as against all others, for a limited period, certain benefits that the law confers. This section of the statute, therefore, should be construed as in contract, and not as one of a penal character.

The copyright law, like the patent law, the law with respect to the registration of trade-marks, and other statutes conferring special privileges, necessarily contains conditions that must be observed by anyone who seeks to reap the benefits of this law, and these conditions are applicable to every beneficiary,—citizen and alien alike. Thus, we find in the Trade-Mark Act of Feb. 20, 1905, Ch. 592, Sec. 28 (33 Stat. L., 730), a provision corresponding closely to that of Sec. 4962 of the copyright law, in that this Trade-Mark Act provides that "in any suit for infringement by a party failing so to give notice of registration (*i. e.*, by marking the words 'Registered' in the United States Patent Office), no damage shall be recovered." Manifestly, this provision of the trade-mark law is applicable alike to citizens of this country and to aliens, and regardless of the place of manufacture of the goods whereon the trade-marks are used.

It is not obligatory upon the manufacturer of a copyrighted article, or of a patented article, or of an article whereon a trade-mark is used, to mark the copyright notice, or the patent notice, or the trade-mark notice upon such article, and no penalty is exacted of him if he fails to do so. But, in failing to do so, he places himself outside of the benefits of the law which, to safeguard the public, makes its benefits conditioned upon the giving of the prescribed notices.

The contention of appellee's counsel that an extra-territorial construction must be given to Section 4962 of the Copyright Act to make it applicable to the marking of books published or copy-

righted articles made abroad is specious and is utterly without support from the authorities. The purpose of Section 4962 is plainly not to enforce, outside of this country, any provision thereof, but simply to prescribe for citizens and aliens alike a condition with which they must comply, for the benefit of the public, before they can avail themselves of the privileges conferred by the statute.

The condition operates only when the owner of a copyright demands that our courts enforce the copyright privilege. It is at such time, and here only, that he is met with the inquiry as to whether or not he has fulfilled the requirement of marking with the copyright notice "the several copies of every edition published," which this court has held "to be one of the conditions precedent to the perfection of the copyright." (*Thompson* v. *Hubbard*, 131 U. S., 123.)

The provision in the contract between appellee and its co-publishers, George Bell & Sons, of London, whereby the latter agreed not to import into the United States or Canada any of the dictionaries in question, was merely a private agreement that could not relieve appellee from the obligation of complying with the provision of our law as to the printing of the copyright notice. A statutory requirement cannot be thus evaded by a private contract. Moreover, no attempt was made to warn the public in any way whatever against the importation of the English books into this country, or to advise purchasers that any agreement existed between the owner of the American copyright and George Bell & Sons with respect to such importation. The agreement was one with which the public had no concern and which might at any time have been modified by the parties to it.

In the case of *Jewelers Mer. Agency* v. *Jewelers Pub. Co.*, 155 N. Y., 241 (49 N. E., 872), the Court of Appeals for New York, in speaking by Chief Justice Parker, said:

> "If a book be put within the reach of the general public so that all may have access to it, no matter what limitations be put upon the use of it by the individual subscriber or lessee, it is published and what is known as the common law right or right of first publication is gone."

So, also, in *Larroque-Loisette* v. *O'Loughlin*, 88 Fed. Rep., 896, and in *Ladd* v. *Oxnard*, 75 Fed. Rep., 705, it was held that the requirements of the statute could not be evaded by a private agreement or restrictions with regard to the use of the books in question.

When appellee and George Bell & Sons published the book in London, they gave no information to the public as to the terms of the private agreement existing between them. It is of no moment that George Bell & Sons have endeavored in some way to prevent the importation into this country of the book. There was certainly nothing about the book itself to lead its possessor in this country to suppose that it was not as devoid of copyright as any other book from which the copyright notice has been omitted. Since 1894 the book published in London has borne the imprint of appellee. In other words, during these past thirteen years appellee has thus held itself out as the publisher, and, in view of this fact, it cannot now be heard to assert that it was not in fact the publisher, nor can it shirk the responsibility of placing before the public the book without the copyright notice.

Certainly there can be no question as to the information conveyed by the imprint that appears at the bottom of the title page of a book. Thus in Webster's Imperial Dictionary "Imprint" is defined as "The name of the publisher of a book, newspaper, etc., often with the place of publication, printed on the title page or elsewhere." In Webster's International Dictionary the definition of "Imprint" is:

> "Whatever is impressed or imprinted: the imprint or mark left by something; specifically the name of the printer or publisher (usually) with the time and place of issue, in the title-page of a book, or on any printed sheet."

Nor can it be urged that, because of its knowledge of the American copyright, appellant is precluded from availing itself of appellee's failure to comply with the requirements of the statute with respect to the insertion of the copyright notice in the several copies of every edition published. Precisely this question was raised before this court in *Thompson* v. *Hubbard*, 132 U. S., 123, and it was there held that such actual notice could not relieve the owner

of the copyright from a strict compliance with the statutory requirements.

The cases relied upon in the lower courts, by counsel for appellee, in support of their contention that an extra-territorial operation must be given to Sec. 4962, if it be construed in keeping with the plain meaning of its language, are totally irrelevant. One of these cases,—that of *The Apollon*, 9 Wheat., 370,—was a case in which the French ship "Apollon" merely passed through the waters of the St. Mary's River for the purpose of proceeding to Spanish territory, and, as this court stated (p. 370), the question was whether that was "to be deemed an arrival within the limits of the United States from a foreign port within the 29th Section of the Act already referred to." The collector of customs seized the ship while "lying in Belle River, a branch of the St. Mary's, within the acknowledged territory of the King of Spain," and this court held (p. 371), that

> " It would be monstrous to suppose that our revenue officers were authorized to enter foreign ports and territories, for the purpose of siezing vessels which had offended against our law."

The case of *Browne* v. *Duchesne*, 19 How., 183, is likewise devoid of bearing upon the question presented here. In that case a French schooner, "Alcyon," when it entered the port of Boston, was provided with a gaff that embodied an invention patented in this country. This court dismissed the suit for the sole reason that there had been no such use of the patented invention in the United States as was contemplated by the statute. But the language of this court in that case makes it perfectly plain that if the invention in question, *although manufactured abroad*, had been brought to this country for the purpose of sale or use, it would have fallen within the purview of the Patent Act. To like effect, also, are the decisions in *Boesch* v. *Graff*, 133 U. S., 697; *Dickerson* v. *Tinling*, 84 Fed. Rep., 192, and *Dickerson* v. *Matheson*, 57 Fed. Rep., 524.

Counsel also relied upon the case of *Jollie* v. *Jaques*, 1 Blatch., 618 (Fed. Cas. 7437), which, being a copyright case, may deserve brief mention. In that case it was sought to defeat the copyright

because of the failure to deposit in the Smithsonian Institution a copy of the work in question. The Copyright Act at that time in force provided that the author or proprietor of a book or the like should deposit one copy in the Smithsonian Institution, but the law did not make such deposit a condition either to the maintenance of a suit, or to the validity of the copyright. The court, therefore, properly declined to declare the copyright invalid.

We submit that the language of the second paragraph of Section 4952 of the Copyright Act in no manner favors the construction invoked by appellee's counsel for Section 4962. The second paragraph of Section 4952, which was inserted by an amendatory act of March 3, 1905, names the following conditions with respect to books published in a foreign language and in a foreign country before their publication in this country, viz.: (1) that the author shall deposit a copy of the book in the Library of Congress within thirty days after the first publication of such book in a foreign country; (2) that the copy so deposited, and all other copies *sold or distributed in the United States*, shall contain on the title page or the page immediately following it, a "reservation of copyright;" (3) that within twelve months after the first publication of such book in a foreign country, the author shall deposit the title and two copies thereof from type set within the United States, and the copy so printed must contain "a notice of copyright, as provided by the copyright laws now in force."

Certainly there is nothing in this section of the Act to countenance the contention that Congress intended to excuse foreign publishers from the duty of placing the copyright notice within their books. On the contrary, the Act places upon the foreign publisher the responsibility that *every copy* of such book sold *or distributed* in the United States shall bear the copyright reservation during the first twelve months after publication, and requires that if the foreign author elects to complete his American copyright and continue the publication in a foreign country he must mark his books with the "notice of copyright as provided by the copyright laws now in force." In this section of the Act, Congress is dealing exclusively

with publishers in a foreign country, and yet we find the law specifically requiring that books thus published abroad must contain "a notice of copyright *as provided by the copyright laws now in force.*" By the words "a notice of copyright as provided by the copyright laws now in force" Congress plainly meant the notice prescribed by Section 4962, and if anything were needed to make it perfectly plain that Congress intended Section 4962 to apply to books published abroad, certainly this language of Section 4952 would supply it. The only way in which a foreign publisher can insure that all copies of his books sold or distributed in the United States bear the copyright notice or reservation is by printing such notice or reservation at the time the books are made, and in all copies produced, since, as every one knows, it is a common practice to import, particularly from England, books published abroad.

It is unreasonable to assume that the second paragraph of Sec. 4952 was intended to apply only to books sold or distributed in the United States by the owner of the copyright. Such a construction would render the requirement of no avail, because it might easily happen that numerous copies of such books sold to dealers abroad by the owner of the copyright would find their way into this country.

Certainly, so far as the case at bar is concerned, Sec. 4962 of the Copyright Act must be construed as it would have been construed had the amendment of March 3, 1905 never been made, because the failure of appellee to give the statutory notice (which failure must defeat its right to maintain this action) occurred many years before the passage of this amendment.

We submit that the history of the section (Sec. 4954) of the Copyright Act relating to renewal notices, affords no support in favor of the construction invoked by counsel for appellee for Sec. 4962. Sec. 4954 provides that persons taking such renewals must publish a notice thereof in one or more newspapers printed within the United States, and counsel would argue from this that as the law required notices with respect to renewals to be published in the United States only, it was the intention of Congress that the statu-

tory notice demanded by Sec. 4962 need appear only in books published in the United States. The answer to this argument is plain. It would be manifestly unreasonable to require the publication of renewal notices everywhere, and, as the information was primarily designed for the benefit of the American public and could best be communicated through newspapers of this country, the law, therefore, provided for the publication of such renewal notices in this country only.

The fact that Congress, while employing the words "in the United States" in Section 4954, omitted the use of such words in Section 4962, plainly indicates a purpose that the copyright notice provided for by Section 4962 shall appear, regardless of where the book is published; for if Congress had intended that the copyright notice of Section 4962 should apply only to books published in the United States, it would have inserted such words of limitation in Section 4962, as it did in Section 4954.

Counsel for appellee contended before the Court of Appeals that "the owner of a copyright cannot control a foreign publication, and should not therefore be penalized for consenting to what he cannot prevent." This argument is specious. It is immaterial whether the owner of the American copyright can or cannot control the foreign publication of his book. If the publication be made *without his consent*, it is piratical and of no effect, whether made in this country or in a foreign country; and conversely, if the publication be made *with his consent*, as in the case at bar, it must defeat his copyright, whether the publication be in this country or abroad.

But in the present case it was within the power of appellee to control the publication of its book, both here and in England, as it owns the English copyright, and it exercised that control by making a contract with George Bell & Sons of London. The fatal feature of the contract was that it specifically authorized the publication of the book in London with the statutory copyright notice omitted therefrom. Had appellee exercised its control over George Bell & Sons, as it plainly could have done, it would have required

the insertion of the statutory copyright notice, and the public would have been warned against trespass thereon.

So, also, counsel's contention that a requirement by a number of countries of the insertion of the copyright notice would impose upon the publisher of a book an impossible burden, is without force. Most of the principal countries of Europe are members of the Berne Convention for the Protection of International Copyrights, and a multiplication of copyright notices in the countries that are parties to such convention is unnecessary. ("The Question of Copyright," by Putnam, p. 287.) But even were it otherwise the fact of inconvenience can not affect the plain meaning of our statute. Moreover, the fact that appellee has marked *both* the American and English copyright notices in the American book must deprive the suggestion of any force in this case.

The question as to whether or not Section 4962 required the placing of the copyright notice upon a copyrighted article made in a foreign country was squarely raised before the Circuit Court of Appeals for the First Circuit in the case of *Pierce & Bushnell Co.* v. *Werckmeister*, 72 Fed. Rep., 54. In that case the pertinent facts were as follows:

A painting by an artist named Naujok was completed in 1891, and from January, 1892, to March, 1892, was publicly exhibited by the artist at Berlin, Germany, and was exhibited also at Munich, Germany, in the summer of 1892. Naujok having assigned his right of publishing the picture to the complainant, Werckmeister (trading under the name Photografische Gesellschaft), the latter copyrighted the painting on the 16th day of May, 1892. In the summer of 1892 the artist sold his painting. There was no notice of copyright inscribed on the original painting, or upon any visible portion thereof, although the photographic copies of the painting made in Germany by the plaintiff and sent to this country were marked "Copyright 1892 by Photografische Gesellschaft." The Court of Appeals for the First Circuit ordered the bill of complaint dismissed, for the reason that there had been no compliance with Section 4962 of the statute requiring that the copyright notice

should appear upon all copies of the painting. In other words, the public exhibition of the original painting in Munich after the registration of the copyright was regarded as a publication of at least one copy of the painting, without the statutory copyright notice. The court there said:

> "But, although a person coming within the class mentioned in section 4952 is entitled to a copyright upon complying with the provisions of section 4956, he cannot enforce any right against infringers except upon giving the notice required by section 4962, as amended by the act of June 18, 1874."

In the lower courts appellee's counsel apparently misunderstood the ground of the decision of the Circuit Court of Appeals in the Pierce & Bushnell case and contended that the copyright had been declared invalid for the reason that there had been a publication before the copyright was registered. By reference to the reported opinion it will be seen, however, that in that case the first error assigned by appellant was as follows:

> "1st. That the court having found that the complainant failed to inscribe the notice required by law upon some visible portion of the painting alleged to be copyrighted, or on the substance on which the same was mounted, erred in finding that he was not thereby debarred from maintaining this action for the infringement of his copyright."

The second ground of error in the Pierce & Bushnell case was the refusal of the court to find that the copyright was invalid because the painting had been published prior to the deposit of the description and photograph thereof in the office of the Librarian of Congress. While the record showed that the painting in question was exhibited without the copyright notice both before and *after* the date of registration, the court based its finding that the copyright was invalid solely upon the ground that there had been a publication of the painting in a foreign country *after* the registration of the copyright and without the copyright notice required by Section 4962. The Court of Appeals distinctly stated that "*upon this ground and without passing upon the other questions raised by the assignment of errors*, the decree of the Circuit Court is reversed."

It is true that in the recent case of *American Tobacco Co.* v. *Werckmeister*, 146 Fed. Rep., 375, the Circuit Court of Appeals for the Second Circuit had occasion to consider substantially the same state of facts as was before the Circuit Court of Appeals in the Pierce & Bushnell case and reached a different conclusion from that expressed in the Pierce & Bushnell case. We submit, however, that the decision in the American Tobacco Co. case cannot aid appellee's contention in the case at bar because the Circuit Court of Appeals, in the American Tobacco Co. case, based its decision solely upon the ground that Section 4962 of the Revised Statutes did not require a copyright notice to be placed upon the *original* painting but only on copies thereof, and the record showed that the notice had been placed upon all *copies* made from the original.

The decision of the lower court in the case at bar has also been cited with approval in the later case of *Harper Bros.* v. *M. A. Donohue & Co.*, 144 Fed. Rep., 491, wherein Sanborn, J., said:

> "In the case of *G. & C. Merriam Co.* v. *The United Dictionary Co.*, already cited, the owner of the copyright, after publishing the book in this country, took the plates to England and there printed and published additional copies; omitting however the notice of American copyright. *Judge Kohlsaat very properly held this to be an abandonment of the copyright.*"

In the courts below a large part of the briefs and the greater part of the oral arguments on behalf of appellee were devoted to the contention that the importation into the United States of copyrighted matter is prohibited. From this it was argued that the appearance of the copyright notice in foreign books is unnecessary, and, being unnecessary, could not have been intended by Congress. The argument is unsound both in its premises and conclusion.

The language of Sect. 4956 of the Revised Statutes, relating to importation, is as follows:

> "During the existence of such copyright the importation into the United States of any book, chromo, lithograph, or photograph, so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives or

drawings on stone made within the limits of the United States, shall be, and is hereby prohibited, except in the cases specified in paragraphs 512 to 516, inclusive, in section two of the act entitled, an act to reduce the revenue and equalize the duties on imports and for other purposes, approved October 1, 1890; and except in the case of persons purchasing for use and not for sale, who import subject to the duty thereon, not more than two copies of such books at any one time; and, except in the case of newspapers and magazines, not containing in whole or in part matter copyrighted under the provisions of this act, unauthorized by the author, which are hereby exempted from prohibition of importation:

"Provided, nevertheless, That in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translation of the same, and the importation of the books in the original language shall be permitted."

We submit that a consideration of the foregoing sections of the law make plain the fact that the importation into this country of books copyrighted here is by no means altogether prohibited. Section 4956, after providing that the two copies of the book required to be delivered to the Librarian of Congress "shall be printed from type set within the limits of the United States or from plates made therefrom," proceeds to prohibit (subject to certain exceptions) importation of books and other articles "not made from type set," etc., within the limits of the United States. These two clauses of Section 4956 are to be read together, and it follows, therefore, that the prohibition of Section 4956 against importation does not apply to books printed from type set within the United States or from plates made therefrom, as is the case with the book here in question.

Again, there are excepted from the prohibition of importation mentioned in Section 4956 "the cases specified in paragraphs 512 to 516, inclusive, in Section 2 of the Act entitled an Act to reduce revenue, etc." These paragraphs read as follows:

"512. Books, engravings, photographs, bound or unbound etchings, maps and charts, which shall have been printed and bound or manufactured more than twenty years at the date of importation.

"513. Books and pamphlets printed exclusively in languages other than English; also books and music in raised print, used exclusively by the blind.

"514. Books, engravings, photographs, etchings, bound or unbound, maps and charts imported by authority or for the use of the United States or for the use of the Library of Congress.

"515. Books, maps, lithographic prints, and charts, especially imported, not more than two copies in any one invoice, in good faith, for the use of any society incorporated or established for educational, philosophical, literary, or religious purposes, or for the encouragement of the fine arts, or for the use or by order of any college, academy, school, or seminary of learning in the United States, subject to such regulations as the Secretary of the Treasury shall prescribe.

"516. Books, or libraries, or parts of libraries, and other household effects of persons or families from foreign countries, if actually used abroad by them not less than one year, and not intended for any other person or persons, nor for sale. (51st Congress, 1st session, chap. 1244; 26 Statutes at Large, p. 604.)"

It must be plain that under these exceptions there are a number of ways in which the book in question may be legitimately imported into this country and made "accessible to the public." Whether or not the books, after being so imported, may be sold here or not, has nothing whatever to do with the entirely different questions as to whether or not they may be imported. The fact remains that when imported they come into public reach and become part of the public store of knowledge.

The articles enumerated in paragraphs 512 to 516 in Section 2 of the Act entitled "An Act to reduce revenue," etc., are not only permitted to be imported, but their importation is, under the law, free of duty. Hence it will be seen that books, etc., mentioned in paragraph 512 of such Act which have been printed and bound more than twenty years may be imported and their importation is encouraged free of duty, notwithstanding the fact that the American copyright on such books may still have twenty-two years to run. Applying the language of the Court of Appeals in this case,—"it is not to be imagined that the law demanded a violation of itself." If the importation of copyrighted books is prohibited, as appellee's

counsel have urged, the law which thus permits the importation of such books free of duty after twenty years, but while the copyright is still in force, would not only allow, but invite, a violation of itself.

Again, Section 4956 excepts from the prohibition against importation cases of "persons purchasing for use and not for sale, who import subject to the duties thereon, and not more than two copies of such book at any one time." The court will readily see that under this exception copies may and do find their way into hundreds of public and private libraries throughout the country. Certainly there could not be any question that there would be publication under these circumstances; and, although the books in such libraries were not originally imported for sale, it cannot reasonably be held that they might not be sold with the libraries in the ordinary way. Nor can there be any limitation placed on the extent of use of extracts made by compilers of other books from such works as do not contain the required notice. It is simply impossible to predicate any reasonable argument upon the ground that the importation of a copyrighted book, although not prohibited, is more or less restricted.

The question as to whether the importation is permitted in large numbers or in limited numbers is obviously unimportant. It might with equal force be said that the Patent Act, providing that a prior publication will defeat an invention, would only be applicable upon a showing of many instances of such prior publication. It is settled law that a single prior publication of a book will defeat a copyright, just as a single prior publication will defeat a patent.

Jewelers' Mercantile Agency v. *Jewelers' Weekly Pub. Co.*, 155 N. Y., 241 (49 N. E., p. 872).

Drone on Copyright, p. 115.

Counsel urged before the Court of Appeals that the importation of foreign books printed from plates made in this country was prohibited altogether, unless with the consent of the owner of the copyright. It was contended that the general prohibition of Section 4956 applied only to foreign books that were not made from

type set in this country, and that the exceptions mentioned in such section consequently did not apply to books made from type set in this country. Hence, it was argued that all foreign books made from type set in this country fell solely within the provisions of Section 4964, which prohibits the importation of books "contrary to the provisions of this Act . . . and without the consent of the proprietor of the copyright," etc.

Section 4964 reads:

> "Sec. 4964. Every person who, after the recording of the title of any book and the depositing of two copies of such book as provided by this act, shall, contrary to the provisions of this act, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, dramatize, translate, or import, or, knowing the same to be so printed, published, dramatized, translated, or imported, shall sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction."

The manifest purpose of the importation clause of Sect. 4956 was to insure that the typographical work of books should be done in this country, and, to effectuate this, Sect. 4956 prohibited (with certain exceptions) the importation of books not made from type set in this country. This was tantamount to saying that books made abroad from type set in this country (as this was made) could be lawfully imported.

Sect. 4964 forbids the importation of "any" copyright book under two conditions: *First*, that such importation is "contrary to the provisions of this Act;" and *second*, that it is "without the consent of the proprietor of the copyright." To make the importation unlawful, therefore, a violation of both of these conditions must be shown. That is to say, the importation must be "contrary to the provisions of this Act," and it must also be "without the consent of the proprietor of the copyright." If the importation clause of Sect. 4956 does not apply to books printed from type set in this country, such importation is certainly not "contrary to provisions of this Act."

And if such importation be not "contrary to the provisions of the Act," it is immaterial whether it is without the consent of the proprietor of the copyright or not, since importation under Sect. 4964 is prohibited only when *both* the conditions stated in such section as negativing the right to importation exist. The fallacy of counsel's argument lies in the reading out of Sect. 4964 the provision that the importation shall be "contrary to the provisions of this Act," or rendering these words meaningless so that the Act shall have the same effect as if the only requirement for importation were stated to be that it was with the consent of the proprietor of the copyright. When the law thus so specifically states that two conditions are necessary to render an importation unlawful, it is manifestly unreasonable to read out of the law either one of such conditions.

We submit that a consideration of the above provisions of the law clearly shows that there may be lawful importation into this country of books published abroad; and, we submit further, that under the facts of this case the importations that have occurred of the English dictionary in question were lawful importations, since the books so imported were not only "made from type set in this country," but were imported "for use and not for sale."

The agreed statement of facts shows that two copies of the English book have been imported into this country by George W. Ogilvie. The first copy so imported was admittedly for the purpose of reproduction by appellant and was without the consent of appellee or George Bell & Sons. The second copy imported by Mr. Ogilvie was, as the Record shows, "purchased for use and not for sale and imported into this country subject to the duty thereon." (R. 41.) So, also, the exhibit books attached to the bill of complaint evidence the facility with which importations of such book may be effected.

Counsel for appellee have argued that there has been no lawful importation of the English book, the ground of the argument being that a book imported for the purpose of reproducing copies therefrom for sale is in effect an importation for sale and not "for use." We scarcely think that the court will give weight to this argument.

Except for the statute, there would be no prohibition against the importation of the book for any purpose and, in view of this fact, the court will scarcely go out of its way to limit the meaning of the word "use" or expand the meaning of the word "sale" as employed in the statute. Moreover, even if the argument were sound as applied to the first importation by Mr. Ogilvie, it certainly could have no bearing upon the second importation by him which the agreed statement of facts specifically shows, without any qualification (R. 41), was "for use and not for sale."

In his work entitled "The question of Copyright" (2nd Ed., p. 142), Mr. Putnam says:

> "While the importation, during the existence of the American copyright, of *editions* of the books so copyrighted, whether the authors of the same be American or foreign, is prohibited, the importation of such books is permitted to the extent of not to exceed two copies in any one invoice, said copies being certified to be 'for use and not for sale.' Buyers of foreign books which have secured an American copyright, who may prefer for their libraries the foreign editions of such books, are, under this provision, enabled to import, either direct or through an importer, not to exceed two copies of such editions. This provision apparently permits the importation (not exceeding two copies in any one shipment) of unauthorized as well as of authorized foreign editions of books which have been copyrighted in the United States."

The opinions of the Attorney-General also show that under the exceptions named in Section 4956 the importation into this country of copyrighted books may be had. Thus, the Attorney-General, in Attorney-General's Opinion, Vol. 23, p. 448, said:

> "I am of the opinion, however, that the importation of all the copyrighted articles mentioned in amended Sections 4956, 4964 and 4965 is prohibited *with the exceptions stated in amended Section 4956*. And I am of the opinion that these exceptions, though not so expressed, apply alike to prohibitions in all these three sections, so far as in their nature, they are applicable to the articles mentioned in Sections 4964 and 4965.
>
> . . . . . .
>
> "The effect of the first exception (*i. e.*, in Sec. 4956) is to

> exempt from the prohibition of importation the articles mentioned in Paragraphs 512-516 inclusive of the Act of 1890."

Again, in the opinion of the Attorney-General, Vol. 21, p. 159 (162) it is said:

> "That the exception in the case of persons purchasing for use and not for sale, who import subject to the duty thereon, not more than two copies of such book at any one time, is not limited in its application to the 'authorized editions' of such book."

The question of whether or not the books imported by Ogilvie were lawfully imported is utterly impertinent except insofar as it bears upon the broader question as to whether anyone is at liberty to import into this country the English edition of appellee's book, and this broader question itself is without bearing upon the question at issue, because, whether the book may be lawfully imported or not, the fact remains that it may undoubtedly get into this country from abroad, and, being here, may be published; and particularly might this be the case where the foreign edition of the book bore a different title from the American edition (thus leaving the customs officer without means of detection), and bore the imprint of the owner of the American copyright, thus evidencing the genuineness of the edition.

As further showing that the question whether or not a copyrighted book can be imported lawfully into this country is without bearing upon the question here at issue, let us consider the following case, which is certainly neither an impossible nor an improbable one: An American publisher finds in England a book comprising, for example, a short poem or dramatic work of perhaps a few hundred lines, or a musical composition of a few pages. The work contains no copyright notice, and he decides to reproduce it. It may perhaps be out of print, and, from his own or another's memory, he reproduces the work in this country, *without importing any copy whatsoever*. Or, to take another illustration, suppose an American artist, traveling abroad, should find a copy of a painting copyrighted in this country, but bearing no copyright notice. Upon his return to

this country he reproduces the painting from memory and without importing any copy thereof. Here are two cases, and many more might be instanced, that clearly show not only why the copyright notice should appear upon American copyrighted articles manufactured abroad, but show also why it is that the question of importation has nothing whatever to do with the requirement of the law prescribing the marking of the statutory notice upon all copyrighted articles, regardless of the place of manufacture.

Mr. Putnam in his "Question of Copyright," p. 145, in speaking of the matter of importation, says:

> "There is, however, no prohibition of the importation of the edition of a book printed in a language other than that in which it has secured its American copyright."

Assuming this construction of the law to be correct, the following result is apparent: An American author, having copyrighted his book here, in English, for example, may print in Paris an edition in French, omitting therefrom the copyright notice. Editions of these French books may then be imported into this country, and, being so imported, may, of course, be translated into English. Thus, we find a further instance showing the necessity of the American copyright notice in books published abroad, because, as the court will readily see, such a notice will not only protect the American copyright owner, but will save an American publisher from innocently trespassing upon the copyrighted material.

We wish to emphasize these points:

(*a*) Under Section 4962 of the Revised Statutes the right to maintain an action is defeated by the fact of *publication* without the copyright notice.

(*b*) The importation into the United States of copyright matter is regulated, but is not prohibited, and, as applied to this book, it was neither regulated nor prohibited.

If we are right in our contention that the fact which, under Section 4962, prevents the maintaining of an action, is *publication* without the copyright notice, then, manifestly, the question as to whether or not copyrighted books may be imported into this country becomes an unimportant one, however interesting it may seem.

The contention on behalf of appellee that the prohibition of importation of foreign made books is vital to the protection of the copyright in this country is, we submit, predicated upon a misconception of the copyright law and of the remedies afforded thereby. Section 4952 of the Revised Statutes gives to the author "the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing and vending" his book. The monopoly thus conferred is enforceable at all times against an unauthorized publication, regardless of whether the unauthorized book be made here or be a foreign-made book imported into this country.

The clause in Section 4956 of the statute restricting the importation of copyright books had a twofold purpose. First, it was designed for protecting American labor, and, second, it was designed as a revenue measure. It was not intended to take the place of the protection afforded an author against piracy of his work—although, incidentally, it might lessen the danger of such piracy. On the contrary, relief against piracy, in whatever form it may appear, is fully provided for by Section 4952. Nor was Section 4964 of the Statute, which subjects to forfeiture and damages any person who, "contrary to the provisions of this Act," and without the original consent of the author, trespasses upon his rights, designed to take the place of the monopoly conferred by Section 4952. If there were no provision whatever with respect to the importation of copyrighted books or other articles, the owner of the copyright would not be without protection, because he would still be able by a suit in equity to prevent infringement. On the other hand, if the provision of the statute which affords the owner of the copyright redress by injunction were eliminated, the provision forbidding or restricting importation would still remain in force. The provisions of the statute are totally distinct and the remedies afforded by each are in no wise dependent one upon the other.

It would appear from the opinion of the Circuit Court of Appeals that its decision was predicated upon the grounds stated in the following excerpts from its opinion (R., 57):

"(*a*) The English copyright is valid in that country. It

was obtained by appellant, a citizen of the United States, with both the legislative and executive invitation and sanction of its own country. Shall it now be held by the Courts of the United States that because of such invitation and sanction appellant was induced to and did obtain a valid copyright in a foreign nation, it thereby invalidated the one it had obtained in its own country? We do not believe that the Congress intended to have their enactments interpreted to an absurdity such as that would be.

. . . . . .

"(*b*) It was never intended that the notice of copyright in this country should be inserted in foreign copyright editions of the same book not designed for sale in the United States.

. . . . . .

"(*c*) If appellant had inserted a notice of the American copyright in the English editions of the book, would it have been true? It is plain that it would not. There can be no just pretense that the identical matter of the English edition had ever been submitted to the forms of law essential to a copyright in the United States. The title and the first three and last thirty-four pages of the English edition were different from the domestic edition. This being true, is it not evident that to have inserted such notice would have been a violation of section 4963 Revised Statutes, subjecting the offender to a penalty of $100? It is not to be imagined the law demanded a violation of itself."

We submit that the views thus expressed by the Circuit Court of Appeals are erroneous:

(*a*) Appellee's British copyright, whether valid or invalid, can have no bearing upon the question at issue, although it is believed that the British copyright is in fact invalid. The record shows that appellee is a corporation under the laws of Massachusetts and a resident of that state and was such at the time of the first publication of the book in England. Being thus a non-resident of England at the time the book was published in London, such fact invalidates the British copyright. In the leading case of *Jefferys* v. *Boosey*, 48 C. L., 815, the House of Lords held that unless the author at the time of publication was resident within the juisdiction of the Crown, he could not be an author within the meaning of the British law. It is true that this decision, which has never been reversed, was ren-

dered under the Statute of Anne then in force, but the decision is equally applicable to the provisions of 5 & 6 Vict., c. 45. Thus in Macgillivray on the Law of Copyright, p. 43, it is said:

> "*Jefferys* v. *Boosey*, 4 H. L. C., 815, then definitely decided that under the statute of Anne a foreigner, unless at the time of publication he was resident within the jurisdiction of the Crown, could not be an author within the meaning of the Act and, therefore, neither he nor his assigns, before or after publication, could acquire copyright. It would seem to follow that the construction of 5 and 6 Vict., Chap. 45, would lead to a similar decision."

The same author (pp. 43-45), after considering the cases decided since *Jefferys* v. *Boosey*, says (p. 44):

> "It is difficult to escape from the conclusion, however willingly one would, that there is really no distinction between the application of the Statute of Anne and that of Victoria, and that, therefore, a case arising on this point under the Act of Victoria, is governed by *Jefferys* v. *Boosey*, a decision which, if erroneous, was not so for want of deliberate research and consideration."

The taking of the British copyright, whether with or without the sanction and invitation of the American Government, could not invalidate or in any manner impair or affect the American copyright. That which invalidates appellee's American copyright is the fact that appellee failed to mark the "several copies of every edition published" by its authority with the copyright notice required by Sec. 4962, R. S.

Nor can the fact that the President of the United States, by his proclamation of July 1, 1891, declared that Great Britain gave to American authors substantially the same rights that were accorded to its own authors, affect in any way the construction to be placed upon the British law. This is recognized by Macgillivray on the Law of Copyright, p. 45, in the following language:

> "After the passing of the Chase Act (1891) in the United States, the law officers of the Crown in England were consulted by the American law officers, and they advised that an American author could acquire copyright in his work by simultaneous

publication in this country and America, even although he was not at any time resident within the British dominions. Consequently on that advice the President of the United States proclaimed Great Britain as one of the countries which gave by their law reciprocal rights to American authors; and English authors are thereby entitled to acquire copyright in the United States. It would certainly be most unsatisfactory if the law of England were now to be declared contrary to the advice then given by our law officers, but it cannot be said that this should influence our courts if their decision on the point was called for."

(*b*) The statement of the Circuit Court of Appeals that it was never intended that the copyright notice required by Sect. 4962 should appear in foreign editions "not designed for sale in the United States" appears to be the main ground on which that court based its reversal of the trial court. The court apparently admits that except for the fact that the foreign books were "*not designed* for sale in theUnited States," the statutory copyright notice *would* be necessary. The logical conclusion from this finding must be that the requirement of a public statute, and one intended for the protection of the general public, may be evaded by a private agreement or the intention of parties of which the public can have no notice.

Section 4962, requiring the marking of the copyright notice, relates alike to books and all other copyrightable articles and the construction to be given to Sec. 4962 must apply alike to all. The law permits the owner of the copyright to make these articles either in this country or abroad and the court may judicially notice the fact that various classes of copyright articles emanate largely from abroad. If the decision of this court be correct, then it necessarily follows that the statutory copyright notice need not be placed upon any copyright article manufactured abroad if the manufacturer *did not intend* to import them into this country. It is submitted that it could not have been the purpose of Congress to leave the enforcement of its specific requirements conditional upon the mental attitude of the manufacturer of which the public has no means of advising itself.

The record shows that the contract between appellant and Geo. Bell & Sons, of London, under which the English edition was published, provided that Bell & Sons should "not sell to others for the purpose of importation," and provided also that they should "use all reasonable means to prevent the importation" of the English edition into the United States. As between the parties to such contract its provisions were doubtless binding. But we submit that inasmuch as the public could have no notice of this private contract between these parties, its provisions should in no wise impair or affect rights accruing to the public by operation of law because of the failure of appellee to observe that specific requirement of the statute necessary to the maintenance of a copyright action.

The requirement of Section 4962, that the copyright notice shall appear in the several copies of every edition published, is plain and unambiguous. Certainly there is nothing in the language of the statute to indicate that its requirement can be evaded by any form of private agreement that the owner of the copyright may see fit to make, or by any mere design or intention that may exist in the mind of the owner of the copyright as to the country wherein his book should be sold.

In *Holmes* v. *Hurst*, 174 U. S., 82 (89), this court said:

> "If an author permit his intellectual production to be published either serially or collectively, his right to a copyright is lost as effectually as the right of an inventor to a patent upon an invention which he deliberately abandons to the public —and this, too, irrespective of his actual intention not to make such abandonment."

Not only does the court in *Holmes* v. *Hurst* thus make plain the fact that the intention or design of the owner of the copyright cannot serve to avoid the operation of the law, but it emphasizes its ruling in this connection by reference to the analogy of the law of copyright to that of patents, in which it is well recognized that the intention of an inventor to preserve his rights is futile to avoid the legal effects of acts which by operation of law defeat such rights.

So also in *Miflin* v. *White Co.*, 190 U. S., 260 (264), the court clearly shows that not only will the intention of the owner of the copyright to maintain his rights fail to take the place of a strict compliance with the statutory requirements, but it shows also that even where attempt has been made by the copyright owner to inform the public of the existence of the copyright in other ways than the way specifically prescribed by the statute, nevertheless, the right is lost. In this connection the court says:

> "It is incorrect to say that any form of notice is good which calls attention to the person of whom inquiry can be made and information obtained, since the right being purely statutory, the public may justly demand that the person claiming a monopoly of publication shall pursue, in substance at least, the statutory method of securing it. *Thompson* v. *Hubbard*, 131 U. S., 123."

Again, in *Miflin* v. *Dutton*, 190 U. S., 265 (266), it was said:

> "It is exceedingly unfortunate that, with the pains taken by the authors of these works to protect themselves against republication, they should have failed in accomplishing their object; but the right being purely statutory, we see no escape from the conclusion that, unless the substance as well as the form of the statute be disregarded, the right has been lost in both these cases."

But, even admitting that the design or intention of the publisher, with respect to the country in which his books are to be sold, may relieve him from the necessity of complying with the statutory requirement, he certainly should not be allowed to avail himself of this fact unless he in some manner informs the public, for whose benefit the law was enacted, as to what his intention or design is. In the case at bar the record shows that there is not one word in the English edition of appellee's dictionary to indicate to the public that such book could not be freely sold and circulated in the United States; nor is it pretended that appellee ever sought in any way to advise the public as to its agreement with Geo. Bell & Sons, or that the English edition "was not designed for sale in the United States."

The statute gives to the public the right to republish a copyright book where there has been a failure to inscribe the statutory notice "in the several copies of every edition published." If the public is to be divested of this right by some design or intention of the owner of the copyright book to localize its sale, then it is certainly the duty of such owner to so inform the public. This could have been easily accomplished by inserting a warning notice in the book itself. While we do not believe that the specific requirement of Section 4962 can be evaded by any such notice, we submit that if the operation of this section of the statute is to be made dependent upon the design or intention of the publisher as to the country in which he will sell his book, then it is certainly his duty to advise the public by some such notice. Having failed to perform such duty to the public, we submit that appellee is estopped to deny that the public may now claim the rights that have accrued to it under the statute because of the failure to mark the English edition with the statutory copyright notice.

(*c*) The Circuit Court of Appeals was plainly in error in assuming that if appellee had marked the American copyright notice in the English book it would have been a violation of Section 4963 of the Revised Statutes.

We submit that the marking of the English edition with the American copyright notice would not have subjected appellee to the penalty provided for by Section 4963 of the Revised Statutes. More than five hundred pages of the English edition are identical with the corresponding pages of the American edition, and it is only in the first three and last thirty-four pages of the books that minor differences appear.

The law requires that the copyright notice shall appear upon the "several copies of every *edition* published." The English book is not a different book, but is merely a different edition of the same book.

The American copyright covers all parts of the book. If appellant, by reprinting the English book, has infringed appellee's rights, it is because appellant has taken what appellee has copyrighted.

If the English book thus copied is copyrighted, then it follows that it was appellee's right under Section 4963, as it was its duty under Section 4962, to mark such edition with the statutory copyright notice.

In the case at bar the equities are no more with appellee than they would be in the case of any author who had failed to insert the statutory copyright notice in a book published in this country. This is not a case of one who has inadvertently omitted the copyright notice or has published with a defective notice, but appellee, with full knowledge of the law, has deliberately disregarded this plain requirement. It has been shown that the requirement of the statute is not an unreasonable one; but if it were, the fault is with Congress, and the remedy must be found there, for the courts must enforce the law as it exists.

We submit that the decree of the Circuit Court of Appeals was in error and should be reversed.

Respectfully submitted,

GEORGE P. FISHER, JR.,
JAMES H. PEIRCE,
WILLIAM HENRY DENNIS.

Supreme Court, U. S.
FILED.
JAN 28 1908
JAMES H. McKENNEY,
CLERK.

IN THE

United States Supreme Court.

OCTOBER TERM.

UNITED DICTIONARY COMPANY, *Appellant,*
against
G. & C. MERRIAM COMPANY, *Appellee.*
No. 129.

BRIEF OF MR. GEORGE W. OGILVIE IN BEHALF OF APPELLANT, FILED ON PERMISSION OF THE COURT.

GEORGE W. OGILVIE,
167 RANDOLPH STREET,
Chicago, Ill.

C. G. BURGOYNE, Walker and Centre Streets, N. Y.

IN THE UNITED STATES SUPREME COURT.

OCTOBER TERM.

UNITED DICTIONARY COMPANY, Appellant, AGAINST G. & C. MERRIAM COMPANY, Appellee.	No. 129.

Brief of Mr. George W. Ogilvie in Behalf of Appellant, Filed on Permission of the Court.

The undersigned respectfully submits, by leave of the Court, granted on the hearing, the following brief and argument in behalf of the appellant and his own interests, and in reply to Mr. Olin's brief *(amicus curiæ)* filed on behalf of appellee.

The undersigned supports the following propositions :

1st. That the importation of the copy of *Webster's Brief International Dictionary*, which was used as the basis of appellant's reprint thereof, was absolutely legal and authorized under the statute.

2d. That the said imported copy having been published without any notice of United States copyright therein, the appellee had no right to maintain this action for infringement.

FIRST.

The importation of the copy of Webster's Brief International ~~Directory~~ Dictionary was legal.

The importation was legal because it was not prohibited under the statute either expressly or by implication.

I do not claim that it was imported under that provision of the statute which permits of two copies of a foreign made book copyrighted in the United States "for use and not for sale" but I do claim that the importation was legal as a book printed, by due authority in England from plates made from type set in this country, which books the statute permits to be imported in any desired quantity, and for any use.

By the Act of March 3, 1891, our statutes extended to foreign citizens the privilege of American copyright. This result was accomplished by striking from R. S. Section 4952 the condition which limited United States copyright to "any citizen of the United Statos or resident therein."

But the privilege was extended to foreign citizens, subject to the proviso that the Act should "only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits the citizen of the United States of America the benefit of copyright on substantially the same basis as to its own citizens; or when such foreign state or nation is a party to an international agreement which provides reciprocity in the granting of copyright," the existence of either condition to be determined by proclamation of the President.

See Chap. 565, U. S. Stat., March 3, 1891 (Vol. 1, Supp. to R. S., p. 951, Secs. 1 to 13).

International copyright, so called, was thus established between the United States and Great Britain,

but in thus establishing it our copyright act did not in any manner exempt foreigners from compliance with the same preliminaries as those to which our own citizens are subjected.

Great Britain and its dependencies is the only English speaking foreign country. The Court will take judicial notice of the frequent interchange between this country and Great Britain and its dependencies of books.

A plainly declared intention of the Act of March 3, 1891, was to secure the American *typesetters* the opportunity of *setting the type* for the printing of books which should secure the privilege of United States copyright. It was accordingly made a condition that the two copies of the books required to be deposited in the office of the Librarian of Congress on or before the day of publication should be *printed from type set within the United States.* This was accomplished under the following proviso:

"Provided, that *in the case of a book*, photograph, chromo, or lithograph, *the two copies of the same required to be delivered or deposited* as above, *shall be printed from type set within the limits of the United States, or from plates made therefrom* or from negatives or drawings on stone made within the limits of the United States, or from transfers made therefrom."

Section 4560 as amended March 3, 1891.

The Act did not prohibit the importation into this country of ALL foreign made editions or copies of books copyrighted in the United States; it prohibited the importation into the United States only of "*any* "*edition or edition thereof*, or any plates of the same "NOT *made from type set*, negatives, or drawings on "stone made *within the limits of the United States.*"

The statute does not demand or require and to secure a valid copyright in the United States it is not necessary for the owner of an American copyright to *print* or *bind* a single copy of his book in the United States. For instance, the owner of a copyright may set the type for his book in Niagara Falls, New York,

and in that form ship it across the border to Niagara Falls, Ontario, make plates and *print* copies of his book there and by sending two copies of that foreign printed book, when bound, to the Copyright Office perfect his copyright. He need never print a single copy of the book in the United States and still his copyright under the requirements of the statute, insofar as *setting the type* is concerned (and there is no other American manufacturing requirement), would be absolutely valid. Can it be said that if he took this means of producing his book he should be relieved of the duty of inserting the notice required by Section 4962 ?

It follows that the foreign edition of the United States copyrighted book might lawfully be imported into this country, provided the said edition or copies were printed (*no matter where they were printed*) from type set within the United States. No protection for American book manufacturers other than the *typesetter* was provided for by the Act or intended to be given.

It is sometimes suggested that under the exception permitting a person to import for use and not for sale two copies of a book, the importation of two copies of foreign-made unauthorized or pirated copies of the copyrighted book, would be authorized. This question has not been decided so far as we are aware and need not be now discussed.

It has also been suggested that the permission of importation of an edition printed from type set within the United States, but printed in a foreign country without authority of the proprietor of the United States copyright, may be inferred from the statute, but this question has not been decided, so far as I know, and the decision of it is not involved in the case at bar. But I think that a pirated copy made in England, for example, of an American copyrighted book, although it may have been made from type set within the United States, would, when imported into this country, be an invasion of the United States copyright, because Section 4952 secures to the copyright

proprietor (author, inventor, designer or proprietor, etc.) "the sole liberty of printing, reprinting, publish-" ing, completing, copying, executing, finishing and " vending the same," but does not limit the author in the selection of a place in which to print and bind his book, if printed from type set within the United States, and if he has complied with the other statutory requirements his copyright is valid.

The brief filed by Mr. Olin on behalf of the American Publishers Copyright League, on page 31 thereof, admits our position thus far, and says, after quoting the prohibition clause referred to above (Sec. 4956): "There is nothing here affecting books produced from type set within the United States."

I think there IS something there affecting such books.

Piratically made copies of an American copyrighted book printed from type piratically set within the United States would, if the question should arise, be condemned under Section 4964, which provides as follows:

"Every person who shall, CONTRARY TO THE PROVISIONS OF THIS ACT, and without the consent of the proprietor of the copyright first obtained in writing—print, publish, dramatize, translate, or *import*—shall forfeit every copy thereof, to such proprietor, and shall also forfeit and pay such damages, etc."

This applies only to copies imported *contrary to the provisions of the act.*

It follows that the importation of the copies of Webster's Brief International Dictionary, thus imported, was legal, the said copies having been printed by authority in England but from plates made from type set within the United States.

The copies thus imported were NOT imported "*contrary to the provisions of this Act*" and therefore were not liable to condemnation under R. S. Section 4964.

Mr. Olin says (p. 31 of his brief):

"books produced from American plates shall not under Section 4964, be imported unless with the written

consent of the proprietor of the copyright, signed in the presence of two witnesses."

That statement does not conform to the language of Section 4964 because the implied prohibition of importation contained in Section 4964 applies only to books which are "printed, published, dramatized, translated or imported *contrary to the provisions of this act.*" There is no express prohibition of importation of copies of books printed abroad *from type set within the United States or from plates made therefrom* in any preceding or following section of the act, and no such prohibition can be implied from Section 4964 or from any other section.

The foregoing conclusion is supported by the rulings of the Treasury Department as declared in a communication by Mr. Armstrong, Assistant Secretary of the Treasury, in October, 1903, addressed to the Register of Copyrights as follows :

COPYRIGHT.

Books printed in a foreign country from type set within the limits of the United States, or from plates made therefrom, are not liable to the prohibitive provisions of section 4956 of the Revised Statutes, as amended.

TREASURY DEPARTMENT, October 26, 1903.

SIR: The Department is in receipt of your letter of the 19th ultimo, wherein you state that Messrs. Edward Schuberth & Co., of New York, have submitted to you the question whether books copyrighted in the United States and printed abroad from plates made from type set in the United States are prohibited entry upon importation when bearing notice that they were so printed. You ask this Department to rule on the question, that you may reply to this and similar inquiries.

Section 3 of the Act of March 3, 1891, amending Section 4956 of the Revised Statutes, provides, among other things, that no person shall be entitled to a copyright unless he shall, on or before the date of pub-

lication, deliver at the office of the Librarian of Congress at Washington, or deposit in the mail within the United States addressed to the Librarian of Congress at Washington, two copies of such copyright book " printed from type set within the limits of the United States, or from plates made therefrom," and that during the existence of such copyright the importation into the United States of any book so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set within the limits of the United States, is prohibited.

Here, it is understood, we have books " printed (abroad) from type set within the limits of the United States, or from plates made therefrom," and which bear a notice to that effect. It will be observed that the statute does not provide that books shall be printed *in the United States*. It merely states that the article shall be produced from type set within the limits of the United States, or from plates made therefrom. Therefore, it is the view of this Department that if the statutory requirements relating to the procurement of the copyright are complied with, and the books are printed from type set within the limits of the United States, or from plates made therefrom, the said books are not liable to the prohibitive provisions of Section 4956 of the revised Statutes, as amended.

Respectfully,

ROBERT B. ARMSTRONG,
Assistant Secretary.

MR. THORVALD SOLBERG,
Register of Copyrights, Washington, D. C.

From " Copyright Enactments of The United States " copyright Official Bulletin No. 3, Second Edition, Revised, Government Printing Office, 1906, pp. 141, 142, and also in " Treasury Decisions,,' Vol. 6, 8 vo., Washington Government Printing Office, 1904, No. 24,742.

The Treasury Department clearly distinguishes between copyright books seeking importation which are thus lawfully produced abroad in conformatory with our statutory requirements and other copyright matter *not* produced from " drawings on stone made within the limits of the United States "; as it will not grant the

privilege of importation to lithographed picture postal cards produced in Germany from *drawings on stone made in that country*, which were copied from an American copyright photograph, although the foreign lithograph was authorized by the owner of the American copyright on the photograph.

The brief for the appellee signed by Mr. Judson says (p. 91) referring to Section 4964 (see also Brief for Appellee, page 89) :

"There seems to be no direct decision of any court "holding that unauthorized importations of copy- "righted articles are illegal under this penal provision "of the statute. But the Treasury Department has "uniformly so held, and has acted upon that con- "struction."

The last sentence is flatly contradicted by the communication from the Treasury Department to the Register of Copyrights quoted just above.

We accept his quotation from the opinion of Mr. Justice LAMAR, speaking for this court in *pennoyer cs. McConnaughy*, 140 U. S., 1-23, as follows :

"The principle that the contemporaneous construc- "tion of a statute by the executive officers of the gov- "ernment, whose duty it is to execute it, is entitled to "great respect, and should ordinarily control the con- "struction of the statute by the courts, is so firmly "imbedded in our jurisprudence, that no authorities "need be cited to support it."

The Treasury decisions quoted by Mr. Judson immediately following the quotation made above were all made *prior to the Act of March 3, 1891*, to wit, in **1882** and **1890**, and hence have no application to cases arising under the Act of 1891.

I therefore respectfully submit that, in the absence of any express or implied prohibition the importation of a book printed in England *from plates made from type set within the United States*, and printed and published in England by the authority and privity of the proprietor of the United States copyright, was an ab-

solutely lawful importation, and the importer upon its arrival might make such use of it as he saw fit, and could sell it again if he saw fit.

The presence of such book in this country being lawful, the question then arises what restriction, if any, was there upon the *use* of the book. The importer could sell it again, but could he copy or reprint it? That depends upon another section of the statute.

II.

In the absence of the statutory notice of copyright, the possessor of the book might reprint it without incurring the penalties under Section 4964.

Section 4962 provides that no person shall maintain an action for infringement of copyright "*unless he shall "give notice thereof by inserting in the several copies of "every edition published,*" at his option, one of the two notices specified in the section.

There is no express limitation to editions printed or published in the United States. I will show later that such an implied limitation would impair and perhaps defeat the purpose of the section.

Mr. Olin's first point (p. 3) has for its caption the following:

"The copyright statute does not *compel* the insertion of a notice of copyright in any book not published in the United States."

The statute does not COMPEL the insertion of such notice in ANY book *wheresoever published.* It is optional with the copyright proprietor. If he does not insert the notice, then he cannot "maintain an action for the infringement of his copyright" (Section 4962).

A construction of Section 4962 limiting its operation to editions published only in the United States must be derived from the statute, if at all, by inference and implication.

It is significant that Congress, when adapting, by the act of March 3, 1891, the statute to international copyright and providing for the copyright in this country of works of foreign authors on condition that the foreign State should extend similar privileges to American citizens, did not in any manner alter Section 4962, and yet Congress did amend Section 4963 immediately following, which section refers to the preceding Section 4962, such amendment consisting in inserting the word "dramatic" between the words "chart" and "or musical composition." Congress could not have overlooked the fact that the importation from abroad of foreign editions of United States copyrighted works was desirable, to be expected and probable, because it expressly permitted that importation as shown above. To read into Section 4962 words limiting its operation to editions printed and published in the United States, would, I respectfully submit, be judicial legislation.

The obvious intent of the section is to require that the public shall receive notice of the copyright so that the public shall understand that reprinting of the book is forbidden. The notice is not, in spirit, addressed to mere readers or purchasers of a book for perusal, but is specially addressed to those persons who, if the book were free, might think it to their interest to reprint it.

No notice, however made, is a notice to any one unless it is in the form prescribed by Section 4962. This has been repeatedly held by this Court, and is so well established that citation is unnecessary. A person acquiring such a book, and observing that it does not contain the statutory notice, *has a right to infer from the book itself* either that it has not been copyrighted, or that, if it has been copyrighted, the proprietor has abandoned his right.

Mr. Judson, the counsel for the appellee, says in his brief (p. 52):

"Every one is presumed to know the law, and if a "foreign book lawfully imported under the statute is "seen in this country the holder must take notice of "the statute allowing its importation. By procuring "an American copy or applying at the Copyright Office "he can readily ascertain whether it is covered by an "American copyright."

I assent to the first sentence of the above quotation. I dissent from the second sentence.

Suppose that the American edition is out of print, or that no American edition extensive enough to go into circulation was ever printed, as was the fact in the case of the book entitled "Sister Carrie" (see Appendix), or that the authorship of the book is anonymous, or suppose that the foreign edition is published under a different title from that of the United States edition it is plain that in any of these cases a purchaser of the foreign edition would not be able to acquire knowledge of the fact of United States copyright without, in the instances supposed, *examining the contents of every copyrighted book deposited in the Librarian's Office during the copyright term of 42 years.*

I print in an appendix a statement contained in an article from the *Chicago Tribune* of April 27, 1907. The facts contained in that article have not been proved in this case, but they are facts which may probably happen and the probability of their happening does not require proof and they are pertinent as illustrations. It is sufficient if they can possibly happen.

The title of a book is not the subject of copyright and not included in the copyright protection.

Therefore a book copyrighted under one title in this country may be copyrighted under an entirely different title in England. For example, a popular novel may be copyrighted in this country under the name of its hero and in England under the name of its heroine. The record in the case at bar shows that a novel was

published in this country under the title of *The Masquerader* and in England under the title of *John Chilcote, M. P.* The English edition of the book when issued in book form had no notice of copyright.

The story "John Chilcote, M. P." was originally published in "Blackwood's Magazine" in England without notice of American copyright. The English copyright is owned by the author and the American copyright by Harper & Brothers in trust for the author, under whose authority the story was completely published in England sixty days before so published in America. This fact in itself invalidated the copyright; further, as "Blackwoods" has a wide circulation in the United States, and, under Section 4956, newspapers and magazines although containing American copyright matter NOT printed from type set in the United States *are specifically exempted from prohibition of importation*, if the copyright matter is "authorized by the author," it is apparent, if the decision of the Circuit Court of Appeals is correct, that American copyright matter may circulate in this country without notice and still retain a valid copyright. The only way that American publishers can be protected against suits for infringement if they reprint such matter, lawfully circulated in the United States, is for this Court to decide that compliance with the statutory requirement of notice is necessary *in all copies published*, whether printed here or elsewhere, before suit for infringement may be maintained. Donohue and Ogilvies' Edition of "John Chilcote, M. P.," shows by its title page that it was "reprinted from 'Blackwood's Magazine,'" copies of which, containing the story, were purchased in the open market in New York City. It is absurd to assume that an English author may by using an American agent, or dummy, in whose name the American copyright is taken out thus evade the statutory requirement and yet retain through the agent an American copyright. A principal can delegate no rights to an agent other than those he possesses.

Section 4952 is referred to by counsel for appellee on page 36 of his brief in support of his contention, but I submit that that section warrants another conclusion. If it is necessary for all foreigners who desire to reserve the right of copyrighting translations into English of foreign language publications to do so by inserting a notice of such reservation in all such books as are "sold *or distributed* in the United States" it is necessary for the foreigner to insert the notice in *all copies published.* The law does not limit the sale or *distribution* to such books as *he* sells or distributes. If they are *sold or distributed in the United States by any one* they go into general circulation. To relieve foreigners of the duty required of our own citizens would be to legislate in favor of aliens as against our own people. Congress certainly never intended to do any such thing as that, but the construction of Section 4952 contended for appellee would extend to foreigners a privilege we do not retain for ourselves.

It is said by counsel for appellee (p. 15 of his brief) that the question presented in this case "has never been discussed in any case, and seems never to have presented itself to the mind of any text writer" and again (p. 66), "as before stated, there are no American decisions wherein this question has been discussed and no text writers who have expressed any opinion upon it. But the English statute has been construed and applied in accordance with the views expressed above." It is true that there are no American decisions on the question and that no text writers have ever discussed the matter, and it is submitted that this is so because it never occurred to any one that the operation of the law, in reference to the insertion of the notice, did not apply to every authorized edition wherever it might be published. For over one hundred years it has been the custom of American publishers to seek in Great Britain for matter that they could freely reprint in the United States. Hundreds of thousands of books have been republished in the United States from foreign editions

that contained no notice of copyright, and there is therefore the best of reason why no text writer should have discussed any such question, because it has always been accepted by the courts and the public that an authorized edition of a book which contained no notice of copyright was free for any one to republish who desired to do so. But we take issue with the statement on page 66 of the brief for appellee that "The English statute has been so construed and applied in accordance with the views above expressed." The English copyright law does not require the insertion of a notice of copyright in any book or books published in England, but it does require if one wishes to reserve it, a notice of the reservation of public performance as applied to music. The English law on that point being as follows (see "Copyright in England," Copyright Office, Bulletin No. 5, p. 8; Washington, Government Printing Office, 1902):

"Proprietors of copyright in musical composition entitled to, and desirous of retaining the right of, public representation or performance, must print on the title page of every copy a notice to the effect that the right of public representation or performance is reserved."

I know of but one decision on that point. The decision is so recent that it is not yet recorded in this country. The only information which I have on the subject is to be found in a letter written by the London correspondent of the *Talking Machine World*, which paper is published in New York City, said letter having been published under date of January 15th. The item referred to is to be found on page 50 of that paper and is as follows:

Failure to Enforce Copyright in England.

"In a recent case before the courts in which it was sought to enforce foreign copyright, or performing rights in this country, the judge held that if the owners of international copyright desire to maintain it

in England they must print upon the title-page of the music the notice that it was copyright as required by the act, and every notice required by English law must be given in the English tongue. This had not been done in the present case; the alleged infringement was therefore not made good."

From the reading of this item it is a fair assumption, as it speaks of a notice in the English language that the piece of music, which was the subject of litigation, displayed a notice of reservation of public performance in some language other than English, thus indicating that the English copyrighted music was published in some foreign speaking country, and that compliance with the English statutory requirement was attempted as the requirement was understood by its foreign publisher, but having failed, not to insert *the* notice but, to insert the notice *in the English language* so that Englishmen whose rights were being protected by the English law could read and understand the notice, all rights were lost.

The decision rendered by this Court on December 2d in the case of Werckmeister vs. American Tobacco Company discussed the question of publication abroad. Mr. Justice DAY said:

"We do not mean to say that the public exhibition of a painting or statue where all may see and freely copy it might not amount to publication within the statute, regardless of the artist's purpose or notice of reservation and rights which he takes no measure to protect."

The subject under consideration was the publication of a painting in Great Britain and in Germany. In Great Britain as an original, and in Germany as a photograph from the original. Let us assume that the copies of the painting, the copyright on the original of which was upheld even although it did not contain a notice of copyright (because the law requires notice only on copies) did not contain the notice required by the statute, would Mr. Justice DAY have then upheld the copyright on the painting? I think not. All

copies of the painting produced abroad contained the required notice and the decision in full, although referring to a painting produced beyond the limits of the United States, distinctly says in eight different places that *notice on all copies* is required. If the intent of the law as construed by the Circuit Court of Appeals and as contended for by the appellee is correct, its operation, as applied to American printers and publishers, would result in the possibility of the incurring by them of heavy damages, although they had acted in good faith. For example, A may set the type for a book in the United States, print a few copies of it, enter it for and secure a valid copyright and then determine that he will confine his operations, in respect to that book, to England. He sends or takes his set of plates to England, and there publishes an edition, perhaps with a title different from that under which he has copyrighted the book in the United States. An American publisher looking for unprotected material, which he may lawfully reprint in this country, may acquire a copy of the English edition of A's book. There being nothing about the book to indicate its American origin, he ventures to reprint it, but first takes the precaution of inquiring at the Copyright Office to ascertain whether there is a copyright on that book, so that he may be assured of the correctness of his position and his freedom from liability for reprinting copyrighted matter. He would receive a reply stating that the indices of the Copyright Office show no copyright entry of a book under that title. He would then proceed to print and publish A's book. A might be perfectly well aware of the fact that the American publisher was reprinting his book, and the American publisher might go to large expense in preparing it for publication and advertising to create a demand. If the decision of the Circuit Court of Appeals is correct, the American publisher would be subjected to the penalties of Section 4965, suit for the collection of which need not be

started sooner than within the two years' time limit prescribed by Section 4968.

Such an operation of the law, I submit, was never intended by Congress, and such a condition could not exist if the requirement of Section 4962, in respect of *notice in the several copies of* EVERY EDITION had been observed by A, which would have included the English edition of his book printed abroad with his knowledge and consent, but from which edition the notice of American copyright was deliberately eliminated, as is proven to be the fact in the case at bar.

That such an instance as this is possible is evidenced by the publication of the book entitled "Sister Carrie," reference to which is printed in the appendix to this brief.

Further, the operation of the law as applied to compilers of books, such as dictionaries, encyclopedias, etc., will be found still more serious, if the decision of the Circuit Court of Appeals is correct. To illustrate, an American publisher may, for the purpose of getting all the information possible on a given subject for the publication of a book on which subject he is engaged, send his editors to the various libraries in the United States for the purpose of consulting and making extracts from all of the books contained in the libraries on the special subjects. He will warn his editors to take nothing from books that are marked with the statutory copyright notice, and direct them to make extracts only from those which are not so marked. He has done everything which the law required him to do, and was acting under his rights in making such extracts. Nevertheless, if the decision of the Circuit Court of Appeals is correct, it may become necessary for him to destroy the entire set plates of the book, on which he may have expended many thousands of dollars because extracts taken from books which did not contain the copyright notice have been held by the decision of the Circuit Court of Appeals in this case to be covered by copyright in the United

States, notwithstanding the *authorized omission of the notice* from such books as those from which he took his extracts.

That it is the custom of American publishers to freely extract from English books not containing the required notice is evidenced by that provision in the contract between George Bell & Sons and G. & C. Merriam Co., which contract is a part of the record, to the effect that George Bell & Sons were not to hold G. & C. Merriam Co. responsible for infringement of English copyrights because of the publication in the book, which is the subject of this litigation, of matter copyrighted in Great Britain which was unquestionably included in Webster's Brief International Dictionary in the manner and form above described by selecting such matter from unmarked English books.

The custom of making such extracts is laudable and general, it was followed by Noah Webster in the compilation of his first and his subsequent dictionaries by copying from Johnson's Dictionary, and has been followed for upwards of a century by all American publishers who publish in the United States works such as dictionaries, encyclopedias, gazetters and like works of reference.

Respectfully submitted,

GEORGE W. OGILVIE.

APPENDIX.

("Chicago Tribune," April 27, 1907.)

Withdrawn Novel Is To Be Given a Second Publication.

Theodore Driesser's Chicago Romance, "Sister Carrie," Which Frightened One Publisher, Secures a Bolder One.

"I have before me a book with a curious history. It is a novel called 'Sister Carrie.' The author is an American by the name of Theodore Driesser. Seven years ago, when the late Frank Norris was reading manuscripts for Doubleday, Page & Co., he read 'Sister Carrie,' and recommended its publication. Other readers for the house read it and also recommended its publication. It was accepted, put into type and duly copyrighted. Then the wife of one of the members of the firm read it and condemned it. It was not, in her estimation, fit to print. It had, however, been accepted, and not only that, but 500 copies had been printed and bound, and the English rights had been disposed of. So for copyright purposes there was a formal publication made, but the book was not allowed to appear. Copies were sent to a few well known writers, all of whom praised its cleverness, and praised some of its other qualities. It was published in London and highly spoken of by the best reviewers, but it never was really published in this country. In the meantime Miss Flo Mai Holly, who acts as authors' agent, had seen a copy of the book, read it, and thought it too striking a performance to go unknown in its own country. She took it to a young publishing firm, E. W. Dodge & Co., and arrangements were made by which Mr. Dodge bought the plates and the few copies on hand from Messrs. Doubleday, Page & Co. So in the course of a few days the book will be regularly launched upon the American market."

IN THE

Supreme Court of the United States

No. 126

UNITED DICTIONARY COMPANY,
Defendant-Appellant,

vs.

G. & C. MERRIAM COMPANY,
Complainant-Appellee.

Motion To File Brief as Amicus Curiæ.

STEPHEN H. OLIN,
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PIERCE & FISHER,
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IN THE

Supreme Court of the United States.

UNITED DICTIONARY COMPANY,
Defendant-Appellant,

vs.

G. & C. MERRIAM COMPANY,
Complainant-Appellee.

Statement in support of motion made by Stephen H. Olin on behalf of the American Publishers' Copyright League for leave to file brief as Amicus Curiæ.

The American Publishers' Copyright League is an organization of publishers existing for the support and development of copyright, and the defense of literary and artistic property.

Its officers are William W. Appleton, President; George Haven Putnam, Secretary, and Charles Scribner, Treasurer.

The association respectfully asks leave to submit a brief upon this appeal, because by the judgment of the Circuit Court and by some suggestions in the opinion of the Circuit Court of Appeals in reversing the Circuit Court, the interests and the property rights of many of the members of the association, and of many other publishers, authors and artists who are interested in copyrights under the United States Statute are affected. A similar request made to the Circuit Court

of Appeals was granted. Counsel for the appellee consent to the filing of a brief by the counsel for the association as *Amicus Curiæ*.

Most books of value which are published in the United States, under the protection of the Copyright Statute, are also published in other countries. As a rule, the editions published in foreign countries do not bear the notice of copyright prescribed by the law of the United States Statute. If the omission of this notice, in the case of a book printed in foreign countries, vitiates the United States copyright, a great number of valuable copyrights have been destroyed, and a number of publishers and authors will be impoverished. If books printed abroad, from plates made here, may be freely imported into the United States, notwithstanding the copyrighting of such books in this country, the value of American copyrights is injuriously affected.

We beg leave to submit some arguments, which were apparently not considered by the learned Judges in the courts below to sustain the following propositions:

FIRST.—The Copyright Statute does not compel the insertion of a notice of copyright in any book not published in the United States.

SECOND.—A book, in which there is a subsisting United States copyright, if printed abroad from type set in the United States, cannot be imported without the consent in writing of the proprietor of such copyright signed in the presence of two witnesses.

Respectfully submitted,

STEPHEN H. OLIN,
Solicitor for American Publishers
Copyright League.

IN THE

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UNITED DICTIONARY COMPANY,
Defendant-Appellant,

vs.

G. & C. MERRIAM COMPANY,
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Brief submitted on behalf of the American Publishers' Copyright League by Stephen H. Olin, as Amicus Curiæ.

The American Publishers' Copyright League is an organization of publishers existing for the support and development of copyright, and the defense of literary and artistic property.

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authors and artists who are interested in copyrights under the United States Statute are affected. A similar request made to the Circuit Court of Appeals was granted. Counsel for the appellee consent to the filing of a brief by the counsel for the association as *Amicus Curiæ*.

Most books of value which are published in the United States, under the protection of the Copyright Statute, are also published in other countries. As a rule, the editions published in foreign countries do not bear the notice of copyright prescribed by the law of the United States Statute. If the omission of this notice, in the case of a book printed in foreign countries, vitiates the United States copyright, a great number of valuable copyrights have been destroyed, and a number of publishers and authors will be impoverished. If books printed abroad, from plates made here, may be freely imported into the United States notwithstanding the copyrighting of such books in this country, the value of American copyrights is injuriously affected.

We beg leave to submit some arguments, which were apparently not considered by the learned Judges in the courts below, to sustain the following propositions:

First.—The Copyright Statute does not compel the insertion of a notice of copyright in any book not published in the United States.

Second.—A book, in which there is a subsisting United States copyright, if printed abroad from type set in the United States, cannot be imported without the consent in writing of the proprietor of such copyright signed in the presence of two witnesses.

FIRST POINT.

The Copyright Statute does not compel the insertion of a notice of copyright in any book not published in the United States.

It may be well to consider the history of the provision requiring the insertion of notice of copyright in the copyrighted book. It is a formality only required by American law. Nothing of the sort is exacted by the English statute.

In the United States Copyright Statute of May 31, 1790, Section 3 provided that no one in the future should have the benefit of the act unless before publication he should deposit a printed copy of the title of the book or other article in the clerk's office of the district where the author or proprietor shall reside. The clerk must record the same in a book in the following language (giving a copy to the author or proprietor):

> " District of , to wit:
> Be it remembered that on the day of , in the year of the Independence of the United States of America, A. B., of the said district, hath deposited in this office the title of a map, chart, book or books (as the case may be), the right whereof he claims as author or proprietor (as the case may be), in the words following, to wit: (Here insert the title), in conformity to the act of the Congress of the United States, entitled, 'An Act for the encouragement of learning, by securing the copies of maps, charts and books to the authors and proprietors of such copies, during the times therein mentioned.' C. D., Clerk of the District of ."

And it was enacted that

> "Such author or proprietor shall, within two months from the date thereof, cause a copy of the said record to be published in one or more of the newspapers printed in the United States for the space of four weeks."

No provision was contained in the Act of 1790 for any notice affixed to the book, but there had been such a provision in the Pennsylvania statute of 1784, in this language:

> "Sec. VI.—*And provided also* that no author or proprietor of any book or pamphlet shall be entitled to the benefit of this act unless he shall insert on the back of the title page a copy of the certificate of entry obtained of the prothonotary aforesaid."
>
> *Copyright Enactments*, p. 19.

In 1802, by the United States statute, it was enacted that a claimant of copyright,

> "before he shall be entitled to the benefit of the Act, * * * he shall * * * give information by causing a copy of the record which, by said Act, he is required to publish in one or more of the newspapers, to be inserted at full length in the title page or in the page immediately following the title of every such book or books, and if a map or chart shall cause the following words to be impressed on the face thereof, viz.: 'Entered according to Act of Congress, the day of , 18 , by A. B., of the State of .'"
>
> *2 Public Statutes of the U. S., 171.*

In the revision of 1831 it was provided by Section 5

> "That no person shall be entitled to the benefit of this act, unless he shall give notice

> of copyright being secured by causing to be inserted in the several copies of each and every edition published during the term secured, on the title page, or the page immediately following, if it be a book, * * * the following words, viz.: 'Entered according to Act of Congress, in the year , by A. B., in the clerk's office of the district court of , (as the case may be).'"
>
> *4 Peters' Public Statutes, 436.*

By the *Statutes of March 3, 1865, 13 Statutes at Large, 540,* and *February 18, 1867, 14 Statutes at Large, 395,* it was provided that copyrighted works should be filed with the Librarian of Congress.

By *Section 97* of the revision of 1870, *16 Statutes at Large, 212,* it was enacted

> "That no person shall maintain an action for the infringement of his copyright, unless he shall give notice thereof by inserting in the several copies of every edition published, on the title page or the page immediately following, if a book, * * * the following words, viz.: 'Entered according to Act of Congress, in the year , by A. B., in the Office of the Librarian of Congress at Washington.'"

In 1873 this provision was incorporated without change in *Section 4962 of the Revised Statutes.*

By the *Act of June 18, 1874, 18 Statutes at Large, 78,* it was provided that the claimant of copyright might use the notice last above quoted, or, at his option, the words

> "Copyright," together with the year the copyright was entered, and the name of the party by whom it was taken out; thus: "Copyright, 18 , by A. B."

I.—It is not intended to repeat the argument already made by the complainant's counsel, that general

words in a statute are ordinarily limited by the territorial jurisdiction of the legislature which enacts it; that the copyright law is intended to give a monopoly of the markets in this country and that the directions, prohibitions and provisions of the law relate, unless otherwise specified, only to the United States. It is declared that the title must be filed "on or before the day of publication in this *or any foreign country*," and that two copies must be delivered to the Librarian of Congress "not later than the day of the publication thereof in this *or any foreign country*" (§ 4956). Under this language publication abroad avoids subsequent copyright here, but, in the sections where there is no such expression, the statute must be deemed to relate to the United States only and not to provide for the regulation of acts to be done in foreign countries beyond the jurisdiction of Congress or our courts.

It is submitted that the history of the provision for notice of copyright greatly strengthens this argument from general principles.

By the statute of 1790 the notice was to be given by publishing in an American newspaper the record of an American Court. By the statute of 1802, the same record of the American Court was to be also printed in full on the title page of "every such book or books." Plainly this meant every such book or books published in the United States. The object of the notice was to "give information," but it would give no "information" to a foreigner unfamiliar with our laws to show him this record of our courts, which would seem to him mere incomprehensible jargon, of which even the date, "in the year of the independence of the United States of America," was clearly not intended to be understood out of this country. No one could for a moment suppose that a book published in a foreign country ought to be defaced by such an inscription.

Furthermore, if the United States could make such a demand of the foreign publisher, other countries could do the same, and a book published in

London might have to bear on its title page the records of a dozen courts in different parts of the world. The statement of the proposition shows its absurdity.

It could not possibly have been intended that American copyright should be lost, if its owner published the book in a foreign country without a notice useless in that country and which would deface the book and injure its sale; and especially was this true in a statute which prevented the importation of books into this country without the consent of the copyright proprietor. Why should a notice, useful only in this country and elsewhere injurious, be inserted in a book the importation of which into this country was forbidden?

After twenty-nine years the statute was amended. The record was no longer to be printed in full, but, instead of it, this notice:

> "Entered according to Act of Congress, in the year , by A. B., in the Clerk's office of the District Court of ," as the case may be.

Surely this provision of the statute of 1831 could not have been intended to give information concerning the copyright in any foreign country. The word "copyright" is not used nor any equivalent of it. The book is said to have been "entered according to act of Congress," but what act of Congress? For what purpose was the entry? It might have been for a police purpose or a revenue purpose, but no one not acquainted with the legislation of the United States would suppose that it was for a copyright purpose. Indeed, there are no means of knowing that the Court mentioned was a Court of the United States, or that this Court had anything to do with copyright, nor would most foreigners recognize the name of the District, or be able to say whether the "Congress" referred to was the Congress of the United States of America or of Mexico,

or of Colombia, or any other of the numerous Congresses of the American continent or other continents.

The fact that twenty-nine years after the system of notice was adopted, Congress framed a notice fit to give information to inhabitants of the United States, and utterly unfit to inform residents of foreign countries or to be understood by them, is strong evidence that a direction to publish the notice "in the several copies of each and every edition published" was intended to relate only to editions published in the United States. It is impossible to suppose that any one could have framed such a notice with intent to use it in books printed in foreign countries.

So with Section 4962 of the Revised Statutes. It is for like reasons plain that the notice was intended for domestic and not foreign use.

> "Entered according to Act of Congress, in the year ——, by A. B., in the office of the Librarian of Congress, at Washington."

Still, there is no notice of copyright intelligible to a man ignorant of United States law. Books might, for all he could tell, be entered in the office of the Librarian of Congress for the use of Congress or in obedience to some act concerning censorship or taxation. Finally, in 1874, it was provided that it should be enough to use the words "Copyright, 18—, by A. B."

Is it not obvious that Congress had in mind only books published in the United States? In such books this form of notice is ample, but in a book printed and published in a foreign country it is no notice at all.

If the book is published in London with this notice, who, unless familiar with the Copyright Statute of the United States, can possibly suppose that United States copyright is meant? The notice might as well refer to British copyright or Austra-

lian, or Canadian, or, for that matter, Spanish, or Japanese, expressed in English, because the book is in the English language. The notice might refer to rights under the Berne Convention.

If Congress had intended this form of notice to be used in foreign countries, the letters "U. S." would certainly have been prefixed to it, as is provided in Section 28 of the Trade-mark Act.

All of these forms of notice were on their face intended for use in this country. None of them was adopted for use in foreign countries. It could not be intended that the foreign edition should bear the copyright notice for the contingency of its importation into this country. Such a contingency was not contemplated by the law. Such importation was prohibited. Up to 1891 and during the period in which all statutes as to notice were passed, there were no exceptions to this prohibition. Not even the United States Government could import a single volume without first having the written consent of the proprietor of the copyright, signed in the presence of two witnesses.

Books so excluded needed no copyright notice. They could not possibly come upon the market in the United States except by the deliberate act of the copyright proprietor. Such an act would be a publication here and subject to the regulation of domestic publication, and then it would be necessary to provide the notice for the books here published, but for the mere foreign publication the notice would be wholly useless and meaningless.

The Amendment of 1891 did not affect the question. As we will show, it did not change the law as to the importation of books produced from type set here, and, therefore, has no bearing upon this case. If it were proper to discuss the law as to books printed from type set abroad, it would be easy to show that the Statute of 1891 made no change in the law as to the printing of copyright notice. The Statute of 1891 did not touch Section 4962 of the Revised Statutes or the law of June 18, 1874.

We submit, therefore, that the Copyright Statute does not require and never has required the printing of any notice of copyright in books printed outside of the United States, whether or not such books were protected by foreign law. The law may, therefore, be more broadly stated than the statement by the Circuit Court of Appeals that "it was never intended that the notice of copyright in this country should be inserted in foreign copyright editions of the same book not designed for sale in the United States."

II.—Of course the force of the argument is increased because this is in effect a penal section.

Literary property, after publication, is nothing but a right of action. Possession, which forms "nine points" of some branches of the law, has no place in the law of copyright. If remedy is denied, right is absolutely destroyed. And if the complainant's property is to be thus destroyed it must be for some act or omission unmistakably enjoined by the statute.

There is no reported case in point.

In *Werckmeister* v. *Am. Lithographic Co., 126 Fed., 244*, it was held that the facts pleaded showed full publication before the copyright, contrary to Section 4956, which requires that the formalities take place before publication *in this or any foreign country* (*126 Fed., 246*).

This case was reversed on appeal because the facts pleaded did not constitute a publication. The question whether foreign publication required the notice was not presented to the Court.

> *Werckmeister* v. *Am. Lith. Co., 134 Fed., 321.*

In *Werckmeister* v. *Pierce, 63 Fed., 446*, Judge PUTNAM, holding that a certain exhibition in Berlin of a picture was not a publication, said:

> "But if by proper authority * * * photographs of this painting have been put on

> the market in the United States under such circumstances that they are not protected by the copyright statutes, the public is free to copy it" (*63 Fed., 447*).

This, we submit, is a correct statement of the law. Publication before copyright avoids copyright, whether it takes place in this or any other country, because the statute says so; but to destroy a copyright already granted, the article not protected by notice must be by proper authority put on the market in the United States.

This decision of Judge PUTNAM was reversed by a divided Court.

Pierce v. *Werckmeister, 72 Fed., 54.*

The Court held that there had been publication before copyright which would avoid the copyright under Section 4956. They also held that the picture, when exhibited, should have contained a notice of copyright, but it is difficult to see how that would have protected the picture. The exhibition was from January to March, 1892, and the American copyright was obtained on May 16, 1892. Hence, a notice of copyright given when the picture was exhibited would have been a false notice.

See a reference to this case in

Werckmeister v. *Am. Lith. Co., 134 Fed., 329.*

The statutes refer to a published edition, which is an edition offered to the public for sale or circulation.

Falk vs. *Gast Lith. & Eng. Co., 2nd Circ., C. C. A., 54 Fed., 890, 893.*

We contend that it plainly appears from the general rules of law and from the history of the copyright law that the omission of the notice of a United States copyright from a book published in a foreign country, although with the consent of the proprietor

of the United States copyright in the same book, does not of itself forfeit that copyright. Of course the printing of such a book in a foreign country might be a step towards its publication here. It may be assumed that the complainants have the right to import their dictionary printed in England from type set here. If they should do so and sell even a single copy without the notice prescribed by law, they would in effect produce an American edition, but as long as they give no consent to the importation, the publication in England is not even a step toward a publication in the United States.

III.—By R. S., Section 4952, as amended March 3, 1905:

> "Whenever the author or proprietor of a book in a foreign language, which shall be published in a foreign country before the day of publication in this country, * * * shall deposit one complete copy of the same * * * in the Library of Congress * * * within thirty days of the first publication of such book, and shall insert *in such copy, and in all copies of such book, sold or distributed in the United States*, on the title page or the page immediately following, a notice of the reservation of copyright in the name of the proprietor, together with the true date of first publication of such book in the following words: 'Published nineteen hundred and , privilege of copyright in the United States reserved under the Act approved , nineteen hundred and five, by ,' and shall, within twelve months after the first publication of such book in a foreign country, file the title of such book and deposit two copies of it in the original language, or, at his option, a translation of it in

the English language, printed from type set within the limits of the United States, or from plates thereof, containing a notice of copyright, as provided by the copyright laws now in force, he and they shall have, during the term of twenty-eight years from the date of recording the title of the book or of the English translation of it the sole liberty of printing, reprinting, binding * * * the said book."

This section suggests the following observations:

1. The notice of reservation of copyright is only to be inserted *in the copy filed in the Library of Congress and in all copies of such book sold or distributed in the United States.*

   The notice of the copyright, "as provided by the copyright laws now in force," *is only to be inserted in the copies either in the original language or the English language, printed from type set in this country.* No direction is made as to any edition of the book printed abroad *except so far as copies thereof are filed with the Librarian of Congress or sold or distributed in the United States.*

2. The form of notice of reservation of copyright is precise and intelligible. It shows that a copyright is desired, and a copyright of the United States, and one granted under a designated statute. Compare the notice in this respect with the notices—vague and meaningless unless used in books published within the limits of the United States—such as:

   "Entered according to Act of Congress, in the year , by A. B., in the Clerk's Office of the District Court of ."

or

   "Copyright, 18 , by A. B."

When Congress directs a notice to be used by a foreigner the notice is one which the foreigner can understand, and of which his use has a meaning. When Congress legislates for books published both in the United States and in foreign countries, it is plainly provided that the notice of copyright is required only in the copies sold or distributed in the United States, or filed with the Librarian of Congress.

3. In view of Section 4952, as amended, it is plain that the words in Section 4962, "the several copies of every edition published," mean "published in the United States."

4. There is no doubt of the meaning of Section 4952.

Is it to be supposed that Congress intended to impose a heavier burden upon the citizens of the United States than upon foreigners?

The foreigner need put the notice of copyright only upon the copies of his book published in the United States or sold or distributed here. Is it to be supposed that Congress would compel the citizen of the United States to insert the copyright notice as well in all copies of his books, printed, published, sold and distributed in foreign countries?

If this supposition is unreasonable Section 4962 must be interpreted in the same manner as Section 4952.

SECOND POINT.

A book, in which there is a subsisting United States copyright, if printed abroad from type set in the United States, cannot be imported without the consent in writing of the proprietor of such copyright, signed in the presence of two witnesses.

The view of the law taken in the Circuit Court is contained in the following extract from Judge KOHLSAAT'S opinion:

> "* * * The Copyright Act prohibits the importation of a book not made from plates from type set in the United States during the life of the copyright, *but contains no prohibition as to a book made from type set in this country, as was the case here. In the latter case there is no restriction placed upon importation, except that imposed by the Revenue Act*, which it is not necessary here to consider" (*Record, p.*).

If this italicized passage correctly states the law, then copyright in books no longer exists, and has been virtually repealed without the knowledge of the legal profession or the book trade, for it is manifest that the copyright proprietor no longer has the sole liberty of vending the copyright work, if a foreign publisher, obtaining possession of plates made from type set in the United States, may print the book, send it to this country, and sell it in competition with the copyright proprietor.

In the Circuit Court of Appeals it was suggested that there is an "absence of a specific prohibition in the statute against the importation of a book in the situation of appellant's English publication" (*Record, p.*).

It is respectfully submitted that there is such a prohibition.

(a.) *History of the Non-Importation Clause in Great Britain* and the *British possessions.*

In 1710 by the *Statute, 8 Anne, Chap. 19,* it was enacted:

> "If any bookseller, printer or other person whatsoever, * * * within the times granted and limited by this act, as aforesaid, shall print, reprint, *or import,* or cause to be printed, reprinted *or imported,* any such book or books, without the consent of the proprietor or proprietors thereof, first had and obtained in writing, signed in the presence of two or more credible witnesses * * * he shall forfeit such book or books * * * and * * * shall forfeit one penny for every sheet which shall be found in his * * * custody."

A condition arose which was not wholly dissimilar to the conditions which produced the United States Statute of 1891, providing that copyright books should be printed from plates made from type set in the United States, and it was met by a law which, like the law of 1891, considered the claims of domestic industry as well as those of literary property.

In 1739, *by C. 36, 12 George II.,* it was enacted:

> "Whereas, the duties payable upon printing paper exceed the duties on printed books, whereby foreigners are encouraged to bring in great numbers of books, originally printed and published in this kingdom and reprinted abroad to the diminution of his Majesty's revenue and the discouragement of trade and manufacture of this kingdom,
>
> It shall not be lawful *for any person whatsoever to import or bring into this kingdom,*

> *for sale*, any book or books first composed or written and printed or published in this kingdom and reprinted in any other place or country whatsoever."

The Statute of *8 George II., C. 13*, was intended to protect "historical and other prints," and forbade any person "to print, reprint *or import for sale*" such prints without the consent in writing of the proprietor, signed in the presence of two credible witnesses.

By the *International Copyright Act, 1838, 1 and 2 Vict., 59, § 8*, it was provided that

> "if any bookseller or printer, or other person whatsoever, in any part of the United Kingdom or the British dominions shall * * * print, reprint, *or import for sale* * * * without the consent of the author or other proprietor of the copyright,"

he should incur certain penalties.

By the *Copyright Act (British), 1842, 5 and 6 Vict., C. 45, § 17*, it was provided:

> "After the passing of this Act it shall not be lawful for any person, not being the proprietor of the copyright, or some person authorized by him, *to import* into any part of the United Kingdom, or into any other part of the British dominions, *for sale or hire*, any printed book first composed or written and published in any part of the said United Kingdom, wherein there shall be copyright, and reprinted in any place whatsoever out of the British dominions."

The section is enforced by forfeiture, &c.

The *International Copyright Act, 1844, 7 and 8 Vict., C. 12, § 10*, provided:

> "All copies of books wherein there shall be any existing copyright, under or by virtue

> of this act * * * printed or reprinted in any foreign country, *except that in which such books were first published*, shall be * * * absolutely prohibited to be imported into any part of the British dominions, except by and with the consent of the registered proprietor of the copyright."

It was claimed that the exception italicized above, "except that in which such books were first published," authorized the importation of such books without the consent of the copyright proprietor; but it was held by the Court that the owner of the copyright of a book first published in Germany may restrain importation of copies printed in Germany, country of origin.

Pitt Pitts v. *George & Co.* (*1896*), *2 L. R., Ch. D., 866.*

It will be seen that the question at issue was analogous to that at bar. The opinion of Lord Justice RIGBY is a model for the treatment of such questions.

By the various enactments with reference to the colonies, as regards copying, every book first published in any part of the British dominions is protected in every other part of them.

The following prohibitions also apply:

In the United Kingdom.

> There shall not be imported into or sold in, without the consent in writing of the owner of the copyright, copies printed outside the British dominions, or copies printed in Canada under the Canadian Act.

In *Canada* importation without consent of the copyright owner is forbidden, subject to restrictions, which may best be examined in *MacGillivray's Treatise* (*p. 191*). The effect upon the colonies of

the *Foreign Reprints Act of 1847* may also there be noted.

MacGillivray on Copyright, 186–191.

(*b.*) *History of the non-importation clause in the United States.*

In 1783 the several States, pursuant to a recommendation of Congress, passed copyright laws similar to each other in general form and based upon the then existing British statutes.

Connecticut adopted a statute in part as follows:

> Be it enacted "That the author of any book or pamphlet not yet printed, or of any map or chart, being an inhabitant or resident in these United States, and his heirs and assigns, shall have the sole liberty of printing, publishing and vending the same within this State, for the term of fourteen years, to commence from the day of its first publication in this State. And if any person or persons within the said term of fourteen years, as aforesaid, shall presume to print or reprint any such book, pamphlet, map or chart within this State, *or to import or introduce into this State for sale*, any copies thereof, reprinted beyond the limits of this State, or shall knowingly publish, vend and utter, or distribute the same without the consent of the proprietor thereof in writing signed in the presence of two credible witnesses, every such person or persons shall forfeit and pay to the proprietor of such book, pamphlet, map or chart double the value of all the copies thereof, so printed, *imported*, distributed, vended, or exposed for sale; to be recovered in any Court of this State proper to try the same."

To like effect were the following statutes,

Maryland, April 21, 1783.

New Jersey, May 27, 1783.

Pennsylvania, March 15, 1784.
South Carolina, March 26, 1784.
Virginia, October, 1785.
North Carolina, November 19, 1785.
Georgia, February 3, 1786.
New York, April 29, 1786.
Copyright Enactments, 1783-1900, Copyright Bulletin No. 3, pp. 10, 13, 14, 18, 19, 22, 23, 25, 27.

On September 17, 1787, the Federal Constitution was adopted, and on May 31, 1790, Congress passed the first Federal Copyright Act. *First Congress, Second Session, Chap. 15, Section 2*, enacted in part as follows:

> "That if any person or persons, from and after the recording the title of any map, chart, book or books and publishing the same as aforesaid, and within the times limited and granted by this act, shall print, reprint, publish, *or import*, or cause to be printed, reprinted, published *or imported* from any foreign Kingdom or State, any copy or copies of such map, chart, book or books, without the consent of the author or proprietor thereof first had and obtained in writing, signed in the presence of two or more credible witnesses; or, knowing the same to be so printed, reprinted *or imported*, shall publish, sell, or expose to sale * * * any copy * * * without such consent first had and obtained in writing as aforesaid, then such offender * * * shall forfeit all and every copy and copies * * * and every such offender shall also forfeit and pay the sum of fifty cents for every sheet which shall be found in his * * * possession, &c."
>
> *P. 30, Copyright Office Bulletin, No. 3.*

In the Act passed February 13, 1831, Section 6 forbids importation in similar terms.

Copyright Office Bulletin, No. 3, p. 36.

The revision of 1870 of the *Copyright and Patent Statute, 41st Congress, 2d Session, Chap. 230*, place the prohibition of importing in *Sections 99, 100. Section 99* enacts as follows:

> "That if any person, after the recording of the title of any book as herein provided, shall within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish *or import*, or knowing the same to be so printed, published *or imported*, shall sell or expose to sale any copy of such book, such offender shall forfeit every copy thereof to said proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction."
>
> *Bulletin No. 3, 47.*

This section without change was in 1873 incorporated in the Revised Statutes as Section 4964.

On March 3, 1891, an act to amend *Title sixty, Chapter three, of the Revised Statutes*, was passed, being *Chapter 565, 51st Congress.*

As is well known to the Court, and as will appear from the proceedings of Congress, the main purpose of this act was to permit persons not citizens of the United States, or resident therein, to avail themselves of the privileges of copyright in this country. Petitions by authors, artists, publishers, colleges and others in favor of the measure were met by counter petitions by printers and labor organizations against it. A compromise was effected. It was provided that books, photographs, chromos and lithographs might be copyrighted only if printed

from type set within the limits of the United States, or from plates made therefrom, or from negatives or drawings on stone made in the United States or from transfers made therefrom. In this form the bill received the support of all parties interested and became law. Provisions extending the rights of the proprietors of dramatic works were also included.

Copyright in Congress, 1789–1904.
Copyright Office Bulletin, No. 8, 205–321.

The limitation in Section 4952 to citizens and residents of the United States was omitted.

The following *proviso* was added to Section 4956:

> "*Provided*, that in the case of a book, photograph, chromo or lithograph, the two copies of the same required to be delivered or deposited as above shall be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives or drawings on stones made within the limits of the United States, or from transfers made therefrom.
>
> "During the existence of such copyright the importation into the United States of any book, chromo, lithograph or photograph, so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives or drawings on stone made within the limits of the United States, shall be, and it is hereby prohibited, except in the cases specified in paragraphs 512 to 516, inclusive, in Section 2 of the Act entitled 'An Act to reduce the revenues and equalize the duties on imports, and for other purposes,' approved October 1st, 1890; and except in the case of persons purchasing for use and not for sale, who import, subject to the duty thereon, not more than two copies of such

book at any one time; and except in the case of newspapers and magazines, not containing in whole or in part matter copyrighted under the provisions of this Act, unauthorized by the author, which are hereby exempted from the prohibition of importation."

Section 4964 was amended so as to read as follows, the additions being italicized:

"SECTION 4964. Every person who after the recording of the title of any book *and the depositing of two copies of such book*, as provided by this act, shall, *contrary to the provisions of this act*, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, *dramatize, translate* or import, or, knowing the same to be so printed, published, *dramatized, translated*, or imported, shall sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction."

Section 4965, in like language, prohibits the importation, "contrary to the provisions of this act," of any copy of any map, chart, dramatic or musical composition, print, cut, engraving, or photograph or chromo, painting, drawing, statue, statuary, or model or design, intended to be perfected and executed as a work of the fine arts.

26 Stat. at Large, 1106–1110.

In 1895, Section 4965 was amended in certain particulars.

28 Stat. at Large, 965.

This history of the clause prohibiting importation of books or articles which are the subject of copyright suggests the following observations:

I.—From the Statute of Anne in 1710 every copyright act in England and America has prohibited the importation of the copyright article, without the consent in writing of the copyright proprietor, signed in the presence of two witnesses.

The Statute of Anne forbade any importation without the proprietor's consent. The Statute of George II. forbade such importation *for sale*. Several of the State laws followed this form, but the first Federal statute in 1790 prohibited absolutely all importation without the consent of the author or proprietor, first had and obtained in writing, signed in the presence of two or more credible witnesses.

The statute of 1802 prohibits the importation of prints "for sale" without the proprietor's consent, and this distinction existed in the revision of 1831, which forbade any one to import books withou, consent, or to "import for sale" maps, charts, prints and other articles without consent. In the statute of 1870 this distinction disappeared with these words "for sale," and it was forbidden, without consent, to import any article the subject of copyright.

No change in this respect was made in the Revised Statutes.

It is therefore true that from the eighth year of Queen Anne, to the year 1891, the law of copyright uniformly prohibited the importation of a book or article the subject of copyright without the consent in writing of the copyright proprietor, signed in the presence of two witnesses.

II.—In 1891 the first object of the amendment was accomplished by striking out of Section 4952 the words "Any citizen of the United States or resident therein who shall be."

The second object was embodied in the provision added to Section 4956 for manufacture in the United States of books, photographs, chromos and litho-

graphs. It was apparent that such a provision would not accomplish its full purpose of protection to home manufacture if importation of articles entirely made abroad should be allowed, and so such importation was forbidden, and, as the prohibition was not for the benefit of the copyright owner, it was made absolute and not dependent upon his consent.

It will be noted that this prohibition had nothing to do with copyright protection, but was solely for the protection of the domestic manufacturer, like the prohibition in the Statute of 12 George II., already cited.

But besides the manufacturer, the public, and especially the reading public, was to be considered. It was prohibited to import into the United States any copyrighted book, chromo, lithograph or photographs, so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives, or drawings on stone made within the limits of the United States. The copyright owner had no longer the right to waive this prohibition (since it benefited only the manufacturer), and thus it might follow that readers, colleges, libraries and even the Government itself would be deprived of valuable books. For this reason an exception was made in certain cases designated by reference to paragraphs 512–516 in the free list of a revenue act and thus already pointed out as worthy of especial favor. These exceptions were as follows:

512. Books, &c., manufactured more than twenty years before importation.

513. Books not in the English language and books for the blind.

514. Books, &c., for the use of the United States or for the Library of Congress.

515. Books, &c., specially imported, not more than two copies in any one invoice, in good faith, for the use of any society incorporated or estab-

lished for education, philosophical, literary or religious purposes, or for the encouragement of the fine arts, or for the use of any college, academy, school, &c.

516. Books and parts of libraries used not less than a year by families coming from foreign counties.

The statute made a further exception "in the case of persons purchasing for use and not for sale, who import, subject to the duty thereon, not more than two copies of such book at any one time."

It may be repeated that these changes in the statute were made not for the benefit of the copyright owner, but the prohibition was made for the benefit of the manufacturer, and the exceptions to the prohibition were made for the benefit of libraries, schools, colleges and the reading public.

So far as the prohibition goes the value of the copyright is in no way impaired, and the effect of the exceptions is, in substance, only to give to the proprietor of American copyright a status approximating that held by the owner of English copyright prior to 1844, and held between 1802 and 1870, by the owner of American copyright in prints, charts, engravings, maps and musical compositions; that is to say, the English law prohibited unauthorized importation "for sale or hire." The American law of artistic copyright, between 1802 and 1870, prohibited unauthorized importation "for sale."

Each of these statutes therefore allowed importation for other purposes than sale or hire, seeking to protect the copyright owner only in his market.

The amendment of 1891 did not allow importation for all purposes except for sale, but only for certain specified purposes which were for use and not for sale.

After the amendment, therefore, the prohibition of importation remained broader than it formerly was in England, and than it formerly was as to maps and prints in this country.

The amendment of 1891 to Section 4956 had these results:

1. It forbade absolutely the importation of books not made from type set or plates made in the United States.

2. To this rule certain exceptions were made allowing importation for use and not for sale.

3. As to the importation of books made from type set or plates made in the United States, *no change was made in the law by the amendment to Section 4956.*

American Press Assn. v. *Daily Story Pub. Co., C. C. A., 7th Cir., 120 Fed., 766, 768.*

III.—The changes made in Section 4964 by the amendment of 1891 are only those required by changes in other sections. The words "dramatize and translate" and "dramatized and translated," correspond to the amendment of Section 4952. The words "and the depositing of two copies of each book," conform to amended Section 4956. And the words, "contrary to the provisions of this act," are rendered necessary by the amendment to Section 4956, allowing importation in specified cases. A man cannot be punished for every importation where some importation is allowed, and, therefore, the words, "contrary to the provisions of this act," were inserted.

IV.—Reading together the different sections of the act as it stands to day we have this result:

Section 4964 prohibits every person without the consent of the proprietor of the copyright, first obtained in writing, signed in the presence of two or more witnesses, to import or, knowing the same to be so imported, to sell or expose to sale any copy of the copyrighted book.

To what does this prohibition relate? Not to books not printed from type set in the United States or plates made therefrom, for importation of them is by Section 4956 absolutely forbidden with or without the consent of the copyright proprietor. Not to the books not printed from type set or plates made in the United States which may in certain cases be admitted for use and not for sale, for the importation of these books in these cases is by Section 4956 allowed with or without the consent of the copyright proprietor. It is plain, therefore, that the prohibition in Section 4964 can only apply and does apply to books printed from type set in the United States or from plates made therefrom. Such books can only be imported with the consent of the proprietor of the copyright owner in writing signed in the presence of two witnesses.

It is plain that the importation of such books is "contrary to the provisions of the act." From the beginning of the law of copyright the monopoly has been guarded by prohibiting importation without the consent of the copyright proprietor. No other method of giving him a monopoly of the market has been or can be suggested. Unless Section 4964 is to be interpreted as forbidding the importation of books printed from American plates, the "sole liberty of printing, reprinting, publishing, completing, copying * * * and vending his book given by Section 4952 is nearly valueless."

Unless it is forbidden to import without the consent of the copyright proprietor books printed from American plates, then there is no subject of importation which is affected by the consent of the copyright proprietor, and the word "import" in Section 4964 is meaningless.

Unless this is the meaning of the statute it would appear that Congress has overthrown an essential feature of the copyright monopoly, which has existed for nearly two centuries and without which copyright has nowhere existed. (The anomalous conditions which have existed in some English

Colonies are illustrations of this rule, not exception to it. *Macgillivray, 187–191.*)

It is not to be supposed that Congress in a statute intended to extend copyright should, without apparent reason or motive wantonly impair it.

V.—Section 4965, prohibits importation of maps, charts, dramatic or musical compositions, prints, cuts, engravings, photographs, chromos, paintings, drawings, statues, statuary, models and designs, without the consent of the copyright proprietor in writing signed in the presence of two witnesses.

This section, like 4964, was amended in 1891, by inserting the words "contrary to the provisions of this act."

By the amended section 4956, importation of chromos, lithographs or photographs was absolutely forbidden.

Maps, charts, prints, cuts, engravings, statues, statuary, models, and designs, however, were not mentioned in Section 4956. These articles can, therefore, be freely imported, unless the prohibition of importation, "contrary to the provisions of this act" is effectual.

If this prohibition is effectual in Section 4965, as applied to maps and other objects not mentioned in the importation clause of Section 4956, it must also be effectual in Section 4964, as applied to books not mentioned in the importation clause of Section 4956, that is to say, books printed from type set in the United States or from plates made therefrom. If maps, charts and prints continue to receive the protection which they have always received then books must also continue to receive such protection.

VI.—The interpretation of the statute urged by the defendants, has this remarkable result: that the foreign author and publisher are preferred to the American.

If the London edition of Webster's Dictionary had been printed from type set in England, its importa-

tion would be prohibited by Section 4956. Injury has come to the Merriam Company, therefore, because they attempted to use in England the plates made in America.

An interpretation of the statute which leads to such a result must be erroneous.

VII.—It follows, therefore, that the courts below were in error in saying that the Copyright Act places no restriction upon importation of books made from type set in this country. The learned Judges evidently overlooked Section 4964, which prohibits such importation without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses.

It follows that a consent to publish, in a foreign country, a book without a copyright notice is not equivalent to a consent to such publication here. In the case at bar the complainant even exacted from the English publisher a covenant not to send the books here, thus re-enforcing the statute by an agreement. Nothing done by the Merriam Company had any tendency to authorize or permit the publication in the United States of any copy of their book not bearing the copyright notice, and the rule applies laid down in *Press Ass.* vs. *Daily Story Pub. Co.*, *120 Fed.*, *766*.

THIRD POINT.

The two books from which the defendant's dictionary is copied were not rightfully in the possession of the defendants.

It appears to have been erroneously assumed in the Circuit Court that the two volumes in question

were imported under the exception to the prohibition of importation contained in Section 4956.

But, of course, as the prohibition related only to books not produced from type set in the United States, so the exception related only to such books, and neither prohibition nor exception in any way affected books printed from type set in the United States as were the plaintiff's dictionaries. A glance at the section will show this.

> "During the existence of such copyright the importation into the United States of any book, chromo, lithograph, or photograph so copyrighted, or any edition or editions thereof, or any plates of the same *not made from type set, negatives or drawings on stone made within the limits of the United States*, shall be and it is hereby prohibited, *except* in the cases specified in Paragraphs 512 to 516 * * *; *and except* in the case of persons purchasing for use and not for sale who import, subject to the duty thereon, not more than two copies of *such book* at any one time."

There is nothing here affecting books produced from type set within the United States.

The statute regulates importation as follows:

Books not produced from American plates shall not, under Section 4956, be imported, unless they fall within the exceptions enumerated in that section.

Books produced from American plates shall not, under Section 4964, be imported unless with the written consent of the proprietor of the copyright, signed in the presence of two witnesses.

The plaintiff's dictionaries were produced from type set in America. Therefore the defendants' importation and possession of them could only be justified by producing the plaintiff's written and witnessed consent.

If it were necessary, it could be pointed out that the defendants did not obtain these copies "for use and not for sale" within the meaning of the statute. The "use" contemplated is not the destruction of the copyright monopoly.

The "use" which is permitted is use by the scholar or the reader, not use by the pirate. It is absurd to suppose that a man who may not import a book for sale may import the book and make copies of it for sale. When the importation is for the purpose of selling copies in this market in competition with the owner of the copyright, it is absurd to say that the importation is for use and not for sale. Such an act is a misuse – an abuse of the exceptional privilege—not a use within the purview of the law.

So, even if the Statute allowed two books to be imported for use and not for sale, this importation, for misuse and as a means of sale, would be piratical and could not lay the foundation of any rights.

Turner v. *Robinson, 10 Irish Chancery, 510, 515, 517.*

But, as we have seen, the books, being produced from type set in the United States, could not be imported under the exceptions to Section 4956, and, not being imported by complainant's consent, were obtained by the defendant in violation of the law and with a piratical purpose.

All which is respectfully submitted,

STEPHEN H. OLIN,
Solicitor for American Publishers' Copyright League.

IN THE UNITED STATES SUPREME COURT.

October Term, 1907.

Office Supreme Court, U
FILED.
DEC 28 1907
JAMES H. McKENNEY

UNITED DICTIONARY COMPANY,
Appellant,

vs.

G. & C. MERRIAM COMPANY,
Appellee.

No. 199.

BRIEF AND ARGUMENT FOR APPELLEE.

CHARLES N. JUDSON,
WILLIAM B. HALE,
FRANK F. REED,
EDWARD S. ROGERS,
Solicitors and of Counsel for Appellee.

IN THE

United States Supreme Court,

October Term, 1907.

UNITED DICTIONARY COMPANY, Defendant-Appellant, vs. G. & C. MERRIAM COMPANY, Complainant-Appellee.	No. 129.

BRIEF AND ARGUMENT FOR APPELLEE.

I.

Statement of the Case.

This is an appeal from a decree of the United States Circuit Court of Appeals for the Seventh Circuit reversing a final decree of the United States Circuit Court for the Northern District of Illinois, which dismissed the bill of complaint for want of equity. The case was heard upon the pleadings and an agreed statement of facts.

The bill was filed to restrain infringement of copyright in the book entitled "Webster's High School Dictionary." The facts briefly stated are as follows:

Appellee, before the publication in this or any foreign country, was the owner of the literary property in and the right to copyright the book "Webster's High School Dictionary," and on August 9, 1892, published and copyrighted the same simultaneously in Great Britain and the United States. Thereafter appellee continued to publish

and sell this book in the United States, complying with all the requirements of the statute and printing the statutory notice of copyright in every copy published or sold in this country. The book under the name Webster's Brief International Dictionary was subsequently published and sold in England under an agreement between appellee and George Bell & Sons entered into on July 18, 1894. This contract expressly provides that George Bell & Sons will not either directly or indirectly sell in or import the book into the United States or sell to others for the purpose of importation, and George Bell & Sons agree to use all reasonable means to prevent such importation by others. It also provides that the American copyright notice may be omitted from such English book. (Rec., 29.) Under this contract the book has been published and sold in England. The copies so published and sold in England by George Bell & Sons have not borne the statutory notice of the American copyright, but have been in full compliance with all the provisions of the English copyright law, and appellee has in England a valid and subsisting copyright in the book. No copies of the English book have ever been imported into or sold in the United States either by appellee or George Bell & Sons, or any one acting for or on behalf of either.

The appellant, United Dictionary Company, is an Illinois corporation organized in June, 1904, with a capital stock of fifteen hundred dollars. George W. Ogilvie, who was its organizer, in January, 1905, caused a newsdealer in Chicago to cable to England and procure for him a copy of Webster's Brief International Dictionary. This book was received in due course and turned over to Ogilvie. This and another copy subsequently imported by Ogilvie are the only copies of Webster's Brief International Dictionary, so far as the record shows, that ever came into this country. Upon the receipt of the first copy the appellant, United Dictionary Company, of which

Statement of the Case.

Ogilvie is a director and principal stockholder, had the pages of Webster's Brief International Dictionary photographed and reproduced verbatim and had plates made which completely reproduced that book and which also reproduced Webster's High School Dictionary except the first three and the last thirty-four pages, the remainder of the two books being identical. This reproduction was with full knowledge of the American copyright and of the identity of the books. (Rec., 33, 34.)

It is expressly stipulated that "said Ogilvie obtained said copy of said 'Webster's Brief International Dictionary,' not for the purpose of selling said individual copy, but for the purpose and intent of having the United Dictionary Company reprint and republish said book without the consent of either complainant or George Bell & Sons." (Rec., 34.)

Appellant advertised the intended publication of its book in the Publishers' Weekly and has circulated pamphlets and printed matter in which this announcement is made. The book has not yet been published but will be unless its publication is restrained. And if published will constitute an infringement of appellee's copyright in the book "Webster's High School Dictionary," if that copyright be valid.

Questions Presented.

Upon the foregoing admitted facts two questions of law are presented. These questions are:

First.—Does the copyright statute (Sec. 4962) require the insertion of the notice of copyright in editions published abroad, but not imported or sold in this country by or with the consent of the owner of the American copyright? If it does appellee's right of action was forfeited by the foreign *publication* and it is immaterial whether

there was ever any *importation*, lawful or unlawful, of the foreign book. In this view, the statutory prohibition against the importation of copyrighted books is only important as bearing upon the construction of the statutory provision in regard to the notice of copyright.

SECOND.—If the statute does not require insertion of the notice in foreign editions, the question then arises whether or not the importation, under the circumstances of this case, amounted to a publication of the book in this country by appellee. The determination of this question involves a consideration of the lawfulness of the importation, because, obviously, appellee's rights cannot be affected by the unlawful act of a third person. Indeed, if appellee has done all that the statute requires, it would seem that its rights cannot be affected by either lawful or unlawful acts of third persons done without its consent. But if the importation was illegal, there is no room for argument. It is only in this collateral way that the question of importation is involved in this case.

The narrow questions of statutory construction thus presented are of great importance, not alone to the appellee in this case, but to American authors and publishers generally, because it is not the custom for American publishers, whose copyright books are also published abroad, to insert or cause to be inserted the American copyright notice in the copies published out of this country for purely foreign circulation. If the contention of appellant be sustained and the decree below reversed, many of the more valuable American copyrights will be invalidated.

The Decisions Below.

The Circuit Court in a short opinion (Rec., 42-43), took the position that as the English book was printed from plates made from type set within the limits of the United States, the copyright act contained no prohibi-

tion or restriction upon unlimited importation by any and every one for any and every purpose; that therefore the omission of the statutory notice in the English book, and the subsequent alleged lawful importation of a copy by appellant, was equivalent in legal effect to a publication in this country by appellee without the required notice. The Circuit Court held that this invalidated the American copyright, and dismissed the bill with judicial regrets, saying that all the equities of the case were with the appellee.

The Circuit Court of Appeals reversed this decree of the Circuit Court, and directed a decree for an injunction in favor of appellee, holding squarely that the copyright statute (Sec. 4962) does not require the insertion of the notice in foreign editions, and that the omission of such notice in the English edition did not invalidate the American copyright of appellee's book. Appellant's proposed reproduction of the imported copy was held to be an infringement of appellee's copyright and was enjoined as such.

II.

Brief of Law.

I.

APPELLEE'S COPYRIGHT IS NOT INVALIDATED BY THE FAILURE TO INSERT THE NOTICE OF THE AMERICAN COPYRIGHT IN THE BOOKS PUBLISHED IN ENGLAND, BUT NOT IMPORTED BY, OR WITH THE CONSENT OF APPELLEE INTO THE UNITED STATES, BECAUSE THE STATUTE HAS NO EXTRA-TERRITORIAL OPERATION, AND THEREFORE DOES NOT REQUIRE SUCH NOTICE TO BE INSERTED IN SUCH FOREIGN BOOKS.

(*a.*) *Extra-territorial Operation of Statutes in General.*

Statutes of a state or nation have no extra-territorial operation, and this rule has been applied to the Patent Act which is *in pari materia* with the Copyright Act.

The Apollon, 9 Wheat., 370.
Bond *v.* Jay, 7 Cranch., 350.
Brown *v.* Duchesne, 19 How., 183.
Gandy *v.* Belting Co., 143 U. S., 592.
Chase *v.* Fillebrown, 58 Fed., 377.
American Sulphite Pulp Co. *v.* Howland Falls Pulp Co., 70 Fed., 986, 992.
Tabor *v.* Commercial National Bank, (C. C. A.), 62 Fed., 383.
The State of Maine, 22 Fed., 734.
Colquohoun *v.* Heddon, L. R. 25 Q. B. D., 129, 134.
Warren *v.* First National Bank, 149 Ill., 9, 25.
Johnson *v.* Mutual Life Ins. Co., 180 Mass., 407; 62 N. E., 733.
Attorney General *v.* Netherlands Fire Ins. Co., 181 Mass., 522; 63 N. E., 950.
Carnahan *v.* Western Union Telegraph Co., 89 Ind., 526;

Charles *v.* The People, 1 N. Y., 180;
Sims *v.* Sims, 75 N. Y., 466;
National Trust Co. *v.* Gleason, 77 N. Y., 400, 401;
People *v.* Mosher, 2 Park. Cr., 195;
Van Voorhis *v.* Britnall, 86 N. Y., 18;
Thorp *v.* Thorp, 90 N. Y., 602;
Moore *v.* Hegeman, 92 N. Y., 521;
Clark *v.* Clark, 62 Mass., 386;
Com. *v.* Lane, 113 Mass., 458;
Leonard *v.* Leonard, 151 Mass., 151;
Martin *v.* Martin, 47 N. H., 52;
Jones *v.* Fidelity L. & T. Co., S. D. , 63 N. W., 553;
Ponsford *v.* Johnson, 2 Blatchf. (U. S.) 51, Fed. Cas. No. 11,266;
Inhabitants of Phillips *v.* Inhabitants of Madrid (N. E.), 22 At., 114;
Sutton *v.* Warren, 51 Mass., 541;
Ross *v.* Ross, 129 Mass., 243;
Commonwealth *v.* Green, 17 Mass., 514;
Logan *v.* United States, 144 U. S., 263;
Ormes *v.* Dauchy, 82 N. Y., 443;
Western Transportation & Coal Co. *v.* Kelderhouse, 87 N. Y., 430;
State *v.* Shattuck, 38 At. Rep., 81.

(*b.*) *The copyright statute.*

(1) Other sections of the act do not apply to books published abroad. Construction should be given which makes the whole act stand consistently together. (See *post*, pp. 30; 32.)

Covington *v.* McNickle, 18 B. Mon. (Ky.), 286.
Blackwood *v.* Reg., 8 App. Cas., 94.
Rex *v.* Poor Law Commissioners, 6 Ad. & El., 1.
Gandy *v.* Belting Co., 143 U. S., 592.
Pennington *v.* Cox, 2 Cranch, 52.

Brensfield *v.* Cotter, 2 Ga., 143.
Burke *v.* Monroe County, 77 Ill., 610.

Sec. 4963 of the copyright act has no extra-territorial operation. (See *post*, p. 33.)

McLaughlin *v.* Raphael Tuck & Co., 115 Fed., 85, 191 U. S., 267.

The act of March 3, 1905 (Sec. 4952), as to books in foreign language indicates no notice necessary in foreign books. (See *post*, p. 36.)

The renewal provisions (Sec. 4954), require notice in the United States only. (See *post*, p. 41.)

The history of Section 4962, shows no notice in foreign books necessary. (See *post*, p. 41.)

(2) The statute expressly authorizes publication abroad under foreign copyright in accordance with foreign law. (See *post*, p. 42.)

Act March 3, 1891.
Amendment of March 3, 1905.
27 Statutes at Large, 981, 982, Proclamation of July 1, 1891.

(3) The object of requiring notice not subserved by insertion in foreign books. (See *post*, p. 47.)

Sarony *v.* Burrow-Giles Co., 17 Fed., 591, 111 U. S., 53.
Snow *v.* Mast, 65 Fed., 995.
American Press Ass'n *v.* Daily Story Pub. Co., 120 Fed., 766.

(4) The form of the prescribed notice shows that it was not intended to be inserted in foreign books. (See *post*, p. 54.)

Rev. Stat., Sec. 4962.
Trade-mark Act of Feb. 20, 1905, Sec. 28.

(5) The owner of the copyright cannot control the foreign publication and should not be penalized for consenting to what he cannot prevent. No statute will be construed to work hardship, injustice, or inequality. (See *post*, p. 56.)

Thompson *v.* Hubbard, 131 U. S., 123.
American Press Ass'n *v.* Daily Story Pub. Co., 120 Fed., 766.
Harper *v.* Donohue & Ogilvie, 144 Fed., 491.
Hepburn *v.* Griswold, 8 Wall., 607.
Lionberger *v.* Rause, 9 Wall., 475.
Davis *v.* Bohle, 92 Fed., 328.
U. S. *v.* Crawford, 47 Fed., 561.

(6) The copyright statute is a system of local regulations applicable only to publications within the jurisdiction, and the general language used in various sections is either expressly or impliedly so limited. (See *post*, p. 59.)

R. S. U. S., Secs. 4952, 4964, 4965, 4966, 4967.
Graves *v.* Gorrie, 2 Canada Commercial Law Rep., 186, 194, 207.
Routledge *v.* Low, 18 L. T. N. S., 874, L. R., 3 H. L., 100.
Jefferys *v.* Boosey, L. R., 4 H. L., 815.

(7) Appellant's brief and argument is founded upon a misstatement of appellee's contention, and of the decision below.

(See *post*, p. 72.)

(c) *Liberal Construction to Support Copyright.*

The copyright statute must be liberally construed with a view to support the copyright. (See *post*, p. 77.)

Ford *v.* Charles Blaney Amusement Co., 148 Fed., 642;
Werckmeister *v.* American Lith. Co., 142 Fed., 827;
Boucicault *v.* Fox, 5 Blatchf. 87, 3 Fed. Cas., 1691;
Mifflin *v.* White, 190 U. S., 260;
Crowe *v.* Aiken, 2 Biss. U. S., 208, 6 Fed. Cas., No. 3441.

(d) *Decisions Touching Precise Questions Presented.*

(See *post*, p. 78.)
Dwight *v.* Appleton, 8 Fed. Cas. No. 4215;
Haggard *v.* Waverly Pub. Co., 144 Fed., 490;
Harper *v.* Donohue, 144 Fed., 491;
Pierce & Bushnell Co. *v.* Werckmeister, 77 Fed., 54;
American Tobacco Co. *v.* Werckmeister, 146 Fed., 375;
American Tobacco Co. *v.* Werckmeister, —— U. S. —— (No. 28, Oct. Term, 1907).
Boucicault *v.* Wood, Fed. Cas. No. 1693.

II.

IMPORTATION INTO THE UNITED STATES OF COPYRIGHT MATTER WITHOUT CONSENT OF THE OWNER OF THE AMERICAN COPYRIGHT, IS AND ALWAYS HAS BEEN PROHIBITED.

(a) The opinions below and statutes. (See *post*, p. 84.)

R. S. U. S., Sec. 4956, as amended.

R. S. U. S., Sec. 4964, as amended.
R. S. U. S., Sec. 3061.

(b) Sections 4964 and 4965 are penal statutes. (See *post*, p. 88.)

McDonald *v.* Hearst, 95 Fed., 656.
Schriver *v.* Sharpless, 6 Fed., 175-179; 110 U. S., 76.
Taylor *v.* Gilman, 24 Fed., 634.
Wheeler *v.* Cobby, 70 Fed., 487.

(c) What is made penal is prohibited. (See *post*, p. 89.)

Opinion Attorney-General Knox, 23 Opinions Attorney-General, 445.

Double prohibition of importation. (See *post*, p. .)

R. S. U. S., Sec. 4956.
R. S. U. S., Secs. 4964, 4965.

(d) Importation of copyright books prior to Act March 3, 1891, and corresponding provisions in earlier acts. (See *post*, p. 89.)

Act May 31, 1790, Sec. 2, 1 Stat. at L., Vol. 1, pp. 124, 126.
Act April 29, 1802, Sec. 3, 2 Stat. at L., pp. 171-172.
Act Feb. 3, 1831, Sec. 6, 4 Stat. at L., pp. 436-439.
Act July 2, 1870, Sec. 99, 16 Stat. at L., pp. 212-217.
R. S. U. S., 1873, Sec. 4964.
Act March 3, 1891, Sec. 7, 26 Stat. at L., pp. 1106-1110.

The Treasury Department decisions are uniformly to

the effect that under these provisions unauthorized importations from abroad of copies of American copyright books is prohibited. This constitutes executive construction and is entitled to great weight. (See *post*, p. 91.)

Pennoyer *v.* McConnaughy, 140 U. S., 23.
Brown *v.* U. S., 113 U. S., 568.
The Laura, 114 U. S., 411.

(e) Importation of copyright books under Act March 3, 1891, prohibited. (See *post*, p. 94.)

Opinion Attorney-General Griggs, 23 Opinion Atty. General, 353.
Opinion Attorney-General Olney, 21 Opinion Attorneys-General, 160.
Bleistein *v.* Donaldson, 188 U. S., 239.
Littleton *v.* Oliver Ditson Co., 62 Fed., 597; 67 Fed., 905.
Opinion Attorney-General Knox, 23 Opinion Attorneys-General, 445-446.
Putnam's Question of Copyright, 4th Ed., p. 138.

III.

THE IMPORTATION OF THE BOOK BY APPELLANT WAS ILLEGAL BECAUSE MADE FOR THE PURPOSE OF REPRODUCTION AND SALE OF SUCH REPRODUCTION, AND HENCE NOT AUTHORIZED BY THE EXCEPTION IN THE STATUTE WHICH PERMITS IMPORTATION OF NOT MORE THAN TWO COPIES OF A BOOK AT ANY ONE TIME "FOR USE AND NOT FOR SALE."

(See *post*, p. 120.)
Treasury Decision , No. 16046.
Opinion Solicitor General Conrad, 21 Op. Atty. Gen., 159.

Notice in Foreign Editions.

IV.

THE IMPORTATION OF THE BOOK BY APPELLANT DID NOT CONSTITUTE IN LEGAL EFFECT, A PUBLICATION BY THE APPELLEE IN THIS COUNTRY.

(See *post*, p. 124.)

Harper *v.* Donohue and Ogilvie, 144 Fed., 491, affirmed without opinion, 146 Fed., 1023.

American Press Assn. *v.* Daily Story Pub. Co., 120 Fed., 766.

III.

Argument.

I.

APPELLEE'S COPYRIGHT IS NOT INVALIDATED BY THE FAILURE TO INSERT THE NOTICE OF THE AMERICAN COPYRIGHT IN THE BOOKS PUBLISHED IN ENGLAND, BUT NOT IMPORTED BY, OR WITH THE CONSENT OF, THE APPELLEE INTO THE UNITED STATES, BECAUSE THE STATUTE HAS NO EXTRA-TERRITORIAL OPERATION, AND THEREFORE DOES NOT REQUIRE SUCH NOTICE TO BE INSERTED IN SUCH FOREIGN BOOKS.

The primary question presented is, whether the failure, under the circumstances of this case, to insert in the books published in England, the copyright notice required by the United States copyright law, works a forfeiture of the United States copyright notwithstanding an exact and literal compliance with the United States statute in regard to all books published or circulated by or with the consent of appellee in the United States.

This is obviously the vital question in the case. If the statute (Sec. 4962), requires notice in foreign editions, and the publication in England under the English copy-

right is a publication of an edition within the meaning of said Section 4962, then appellee's right to sue was lost, if at all, *before there was any importation.* Singularly enough, the Circuit Court did not decide this fundamental question. It did not construe in any way that provision of the statute (Section 4962) which provides for a notice of copyright, and did not determine what was required by the statute. It concerned itself only with the lawfulness of appellant's importation of a copy of the English book, and having held that such importation was lawful, held further that such alleged lawful importation of the book by appellant amounted to a lawful publication here by the appellee without the notice which it is conceded the statute requires in every copy of the authorized American editions.

The Circuit Court of Appeals, in reversing this decision of the Circuit Court, held, with manifest correctness, that the statute (Sec. 4962) does not require the notice of American copyright to be inserted in books published and circulated outside of the United States. "It was never intended that the notice of copyright in this country should be inserted in foreign copyright editions of the same book not designed for sale in the United States." (Rec., p. 57). This holding is the specific error assigned on this appeal. (Rec., p. 60.)

The question then is, what is the law in regard to notice? Does the statute require its insertion in foreign editions not imported with the consent of the proprietor of the copyright, and especially in foreign editions copyrighted abroad in accordance with the International Copyright Act of 1891?

This is purely a question of statutory construction. The language to be construed is as follows:

> "No person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published * * * the following words,

viz.: 'Entered according to act of Congress, in the year —, by A. B., in the office of the Librarian of Congress, at Washington;' or, at his option, the word 'Copyright,' together with the year the copyright was entered, and the name of the party by whom it was taken out, thus: 'Copyright, 18 —, by A. B.'" (Rev. Stat., 4962, as amended by Act of June 18, 1874; 18 Stat. at Large, pp. 78, 79.)

It may be noted that this section was left untouched by the amendments in the Act of 1891.

Appellee contends and the Circuit Court of Appeals held, that this statute does not operate upon acts done beyond the territorial limits of the United States, and does not require the prescribed notice to be inserted in books which are only published and sold in foreign countries.

Appellee does not contend that Congress has not the *power* to require a notice in foreign editions as a condition of maintaining a suit for the infringement of an American copyright, but only that Congress *has not exercised such power* and has never manifested an intent to exercise such power. The power is conceded; the intent to exercise it is denied.

The correctness of appellee's contention in this regard will appear from (a) the established rules of statutory construction, and (b) a construction of the copyright law as a whole with a view to its object and purpose. This question has never been discussed in any case, and seems never to have presented itself to the mind of any text writer.

(a) *Extra-Territorial Operation of Statutes in General.*

It is a principle of universal application that the statutes of a state or nation have no extra-territorial operation, and that however general and comprehensive

the language of a statute may be, it should always be restricted in construction to places and persons within the authority and jurisdiction of the Legislature enacting it.

The Appollon, 9 Wheat. (U. S.), 370.

> "It is so unusual," said Chief Justice Marshall, "for a Legislature to employ itself in framing rules which are to operate only on contracts made without their jurisdiction that courts can never be justified in putting such a construction on their words, if they admit of any other interpretation which is rational and not too much strained."
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> Bond *v.* Jay, 1 Cranch. (U. S.), 350.

> "No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived." Gray, Justice, in *Hilton* v. *Gugot,* 159 U. S., 113, 163.

General words used in the patent laws are construed as being limited to the territory of the United States.

In *Brown* v. *Duchesne,* 19 How. (U. S.), 183, it was held that the exclusive use granted to an American patentee did not extend to a foreign vessel entering one of our ports, and the use of the patented device upon such vessels while in a port of the United States was not an infringement of the American patent, provided it was placed upon the vessel in a foreign port, and authorized by the laws of such foreign country. Chief Justice Taney said:

> "This question depends on the construction of the patent laws, for undoubtedly every person who is found within the limits of a government, whether for temporary purpose or as a resident is bound by its laws. * * * The general words used in the clause of the patent laws granting the exclusive

right to the patentee to use the improvement, taken by themselves, and literally construed, without regard to the object in view would seem to sanction the the claim of the plaintiff. * * *

"The patent laws are authorized by that article in the Constitution which provides that Congress shall have power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. *The power thus granted is domestic in its character, and necessarily confined within the limits of the United States.* It confers no power on Congress to regulate commerce, or the vehicles of commerce, which belong to a foreign nation. * * * And when Congress are legislating to protect authors and inventors, their attention is necessarily attracted to the authority under which they are acting, and it ought not lightly to be presumed that they intend to go beyond it. * * *

"Nor is there anything in the patent laws that should lead to a different conclusion. They are all manifestly intended to carry into execution this particular power. They secure to the inventor a just remuneration from those who derive a profit or advantage *within the United States,* from his genius and mental labors. * * *

"But *these acts of Congress do not, and were not intended to operate beyond the limits of the United States;* and as the patentee's right of property and exclusive use is derived from them, they cannot extend beyond the limits to which the law itself is confined. * * *

"Congress may unquestionably, under its power to regulate commerce, prohibit any foreign ship from entering our ports, which in its construction or equipment, uses any improvement patented in this country, or may prescribe the terms and regulations

upon which such vessel shall be allowed to enter. * * *

"But, however that may be, we are satisfied that no sound rule of interpretation would justify the court in giving to the general words used in the patent laws the extended construction claimed by the plaintiff, in a case like this, where public rights and the interest of the whole community are concerned."

All of the above quotation from Mr. Justice Taney is fully applicable to copyrights under the United States statute. Patents and copyrights are coupled in the Constitution, and the power granted to, and exercised by, Congress is the same in each case. If the patent laws have no extra-territorial force, neither have the copyright laws. If general words in the patent law must be limited by construction to operation within the limits of the United States, in like manner general words in the copyright law must be confined in their operation to the limits of the United States.

In *Gandy* v. *Belting Co.*, 143 U. S., 592, another section of the Patent Act was construed as limited in its operation to the territory of the United States. Rev. Stat. Sec. 4886 provides in general language that a public sale or use of an invention two years prior to application for a patent shall render the patent void. This section contains no limitation as to where such public sale or use must occur in order to invalidate the patent. The Supreme Court held that such sale or use in a foreign country will not invalidate the patent; and that *the sale or use must take place in this country to invalidate the patent.*

The same ruling was made in *Chase* v. *Fillebrown*, 58 Fed., 377, and in *American Sulphite Pulp Co.* v. *Howland Falls Pulp Co.*, 70 Fed., 986.

These cases are an excellent illustration of the principle of statutory construction that all sections of a

statute must be construed together as harmonious parts of a consistent whole. In these cases general words in one section of the Patent Act were cut down and limited by construction in view of other sections of the act which showed that Congress intended something less than the broad unrestricted meaning of its words might indicate. This is precisely what this court is invited to do in case of the Copyright Act.

In *Tabor* v. *Commercial Nat. Bank* (C. C. A.), 62 Fed., 383, it was held that a state statute, imposing a personal liability on directors of a corporation who fail to perform certain acts required by the statute, must be presumed to require the acts be be done within the state enacting the statute, unless it is otherwise clearly provided. Judge Sanborn said:

> "The statutes of the state by virtue of which the franchise vests become the charter of the corporation, and those who seek and accept such a franchise tacitly agree to perform the requirements, assume the responsibilities, and discharge the liabilities which the laws of the state impose. Such laws have no extra-territorial force, no operation beyond the borders of the state that enacts them, except by comity alone; and hence, *it must be presumed that all their requirements must be fulfilled within the borders of that state*, unless the statutes otherwise clearly provide."

In like manner, copyright is a franchise and the required acts must be done within the United States, and there alone, unless the statute clearly provides otherwise.

In the *State of Maine*, 22 Fed., 734, it was held that an act of Congress forbidding advances of wages to seamen had no application to the shipment of seamen upon American vessels in foreign ports. Judge Brown said:

> "The language of this section is doubtless broad enough to embrace the shipment of seamen in foreign

ports, as well as in ports of the United States; but statutes must be interpreted and applied according to their intention. * * *

"*Statutes have no extra-territorial force.* The shipment of seamen in a foreign port, and the payment either of advance wages or of bills previously incurred, as in this case, as an advance of wages, are acts done and completed wholly upon foreign soil; and, therefore, wholly beyond the jurisdiction of this country. * * * *Every presumption is against the supposition that Congress had any intention to legislate in reference to acts done and completed wholly beyond its jurisdiction.* And while Congress might, perhaps, subject the masters of American vessels, upon their return to this country, to punishment for acts done upon foreign soil, though such acts were lawful there, still, such an intention would not be presumed. Nor is such an intention sufficiently indicated by mere general language, that can be fully satisfied by its application to all such acts committed within the territorial jurisdiction of the United States. *The intention to include acts done on foreign territory would only be inferred from some specific provisions showing an indisputable intention to make the statute applicable to acts committed beyond our territorial jurisdiction.* The provisions of this statute are not of the specific character. * * *

"It is scarcely credible that in passing this act Congress intended to undertake to correct similar evils in all parts of the world, if they everywhere exist. It had in view the reforms which were deemed necessary in our own ports, over which it had control; and there, presumably, its intention ends. * * *

"Having no power to carry out any such reforms in foreign territory, it is, again, *scarcely credible that Congress intended by this section to place Amer-*

ican ships at a great disadvantage as compared with other ships in foreign ports, by preventing their obtaining seamen upon the *same terms available to foreign vessels*. This section, if applied to our vessels in foreign ports, would be wholly futile as regards the correction of any similar abuses there; and it would have no other practical effect than to cripple and disable our own shipping in foreign ports. This is a result clearly foreign to the purposes of this act. 'All laws,' says the Supreme Court in U. S. *v.* Kirby, 7 Wall., 786, 'should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the Legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter.'..*Carlisle* v. *U. S.*, 16 Wall., 153."

In *Colquhoun* v. *Heddon*, L. R. 25 Q. B. D., 129, 134, 135, the English Income Tax Act, which exempted from taxation premiums paid for life insurance, "in any company" was limited by construction so as to exclude from the exemption, insurance in foreign companies, although having an office and doing business in England. The court said (p. 135):

"It seems to me that our Parliament ought not to deal in any way either by regulation or otherwise, directly or indirectly, with any foreign purpose or thing which is outside its jurisdiction, and unless it does so in express terms so clear that their meaning is beyond doubt, the courts ought always to construe general words as applying only to persons or things which will answer the description, and which are also within the jurisdiction of Parliament."

Construction of Statute.

In *Warren* v. *First National Bank*, 149 Ill., 9, 25, Mr. Justice Bailey said:

> "The general law and regulations of a state are intended to govern only within the limits of the state enacting them, and the state can have no power to give them extra-territorial force."

In *Johnson* v. *Mutual Life Ins. Co.*, 180 Mass., 407, 62 N. E., 73, and in *Attorney General* v. *Netherlands Fire Ins. Co.*, 181 Mass., 522, 63 N. E., 950, Mr. Justice Holmes held that statutes of a state regulating insurance contracts and referring to "every policy" will be construed as intended to affect only contracts made within the jurisdiction.

In *Carnahan* v. *Western Union Telegraph Co.*, 89 Ind., 526, Revised Statutes of Indiana, of 1881, Section 4176, gave a right to recover a penalty for failure of a Telegraph Company to transmit a message. The Western Union Telegraph Company operated a telegraph line between Oxford, Indiana and Fairbury, Illinois. Plaintiff delivered a message to the Telegraph Company's agent at Fairbury, addressed to Walter Carnahan at Oxford, Indiana. The Telegraph Company, it was alleged, wholly failed to transmit the message and Carnahan thereupon started a suit under the Indiana statute to recover the penalty. Judge Elliott, speaking for the Supreme Court of Indiana, said (527):

> "The right which the appellant seeks to enforce is the recovery of a penalty prescribed by statute for a breach of duty, and is, therefore, a right existing solely by virtue of statute. Statutes prescribing penalties have no force beyond the territorial limits of the State by which they were enacted. It is quite clear that our statute can not apply to acts done in Illinois. Buckles *v.* Ellers, 72 Ind., 220 (37 Am. R., 156); Vandeventer *v.* New York, etc., R. R. Co., 27

Barb., 244; Whitford *v.* Panama, etc., R. R. Co., 23 N. Y., 465; Richardson *v.* New York, etc., R. R. Co., 98 Mass., 85; Woodward *v.* Michigan, etc., R. R. Co., 10 Ohio St., 121. If the neglect of duty is to be regarded as having been committed in our sister State, then it is manifest that the action will not lie."

In *Charles* v. *The People*, 1 N. Y., 180, Judge Bronson said (184):

"The defendant insists that our lottery act does not forbid the publishing an account of any lottery, except such as are opened, set on foot, or drawn within this State. (1 R. S., 665, §28.) He makes the word 'such,' in the 28th section, refer, among other things to the words 'within this State,' in the 27th section. But *the words 'within this State,'* as there used, *neither add nor take away anything from the force of the section. Our Legislature has no extra-territorial jurisdiction; and when it forbids, in unqualified terms, the doing of an act, it must always be understood that the thing is only forbidden within this State. The Legislature has in this instance only expressed what is usually left to implication.*"

In *Sims v. Sims*, 75 N. Y., 466, the Revised Statutes of New York provided that no person sentenced upon a conviction for felony shall be competent to testify in any cause, etc., unless pardoned by the Governor or Legislature. The defendant had given material testimony in his own behalf. It appeared that he had been guilty of a felony, and had been convicted in the State of Ohio, 35 years previously. His testimony was excluded by the Trial Court. The question presented was whether under the terms of this statute the exclusion of defendant's testimony and his disqualification as a witness were justified. Judge Rapallo said (469):

Construction of Statute.

"I think it quite clear that the disqualification created by this statute is consequent only upon a conviction in this State. It is found in that part of the Revised Statutes which relates to crimes and their punishment, and is in the nature of an additional penalty consequent upon the sentence. Although the disqualification incidently affects parties in civil litigations wherein the testimony of the convict may be material, and serves as a protection to those against whom his testimony may be sought to be used, yet the provisions which inflict it must be regarded as a part of the criminal law of this State. Furthermore the provisions requiring that the offence be a felony, and defining the term felony as used in that act indicate that the conviction referred to, is a conviction had within this State. Though petit larceny was a felony at common law it has been held that a conviction of that offence does not constitute a disqualification in this State but the offence must be a felony as defined in the statute above cited." * * *

And it was held that the section of the statute above quoted though general in terms, referred only to conviction for felony in the courts of New York.

See also, National Trust Co. *v.* Gleason, 77 N. Y., 400, 401;
People *v.* Mosher, 2 Park Cr., 195;
VanVoorhis *v.* Britnall, 86 N. Y., 18;
Thorp *v.* Thorp, 90 N. Y., 602;
Moore *v.* Hegeman, 92 N. Y., 521;
Clark *v.* Clark, 62 Mass., 386;
Com. *v.* Lane, 113 Mass., 458;
Leonard *v.* Leonard, 151 Mass., 151;
Martin *v.* Martin, 47 N. H., 52;
Jones *v.* Fidelity L. & T. Co., S. D., 63 N. W., 553;

Ponsford *v.* Johnson, 2 Blatchf. (U. S.), 51 Fed. Cas., No. 11266;
Inhabitants of Phillips *v.* Inhabitants of Madrid (N. E.), 22 At., 114;
Sutton *v.* Warren, 51 Mass., 541;
Ross *v.* Ross, 129 Mass., 243.

This question came before the Supreme Court of Massachusetts, in 1822, in the case of *Commonwealth* v. *Green*, 17 Mass., 514. The defendant had been indicted and tried for murder. On the trial, one Sylvester Stoddard, who had been convicted of larceny, and was in the State prison, testified for the prosecution. He had been pardoned previously to the trial by the Governor, and was admitted by the court as a competent witness. After verdict, and before sentence was pronounced, information was received by counsel for defendant that Stoddard had been previously convicted of felony in the State of New York, and had been punished by confinement in the penitentiary in that State. A motion was made for a new trial on the ground that since Stoddard had been convicted of a felony he was rendered infamous and incompetent to be sworn as a witness. It was conceded that his conviction in New York would have rendered him incompetent as a witness in any court in New York, and further, that if he had been convicted in Massachusetts he would have been incompetent as a witness. The question presented however was whether his conviction in New York rendered him incapable of testifying in the Massachusetts courts. Mr. Chief Justice Parker said (546):

> "Does the conviction of an infamous offence, proved by the copy of a record of a court of competent authority in the state of New York, render the subject of such conviction incompetent as a witness in the courts of this state? We do not think that this follows from any principles yet established.

> * * * * * * No one supposes that they (fugitives), can be proceeded against and punished, either in their persons or property, in virtue of any judgment, which may stand against them in the state from which they fled. Why then should they be collaterally affected by the consequences of any such judgment? A disparagement of character, and incompetency to testify, are a part of the punishment of crime, either at the common law, or by statute. If the penalty do not extend beyond the jurisdiction, against which the crime was committed, then incompetency, which is the effect and consequence of crime, and part of the penalty, cannot reach beyond the limits of the state, whose laws have been violated."

This rule has been adopted by the Supreme Court of the United States in the case of *Logan* v. *United States,* 144 U. S., 263, where Mr. Justice Gray observed (303):

> "At a common law, and on general principles of jurisprudence, when not controlled by express statute giving effect within the State which enacts it to a conviction and sentence in another State, such conviction and sentence can have no effect, by way of penalty, or of personal disability or disqualification beyond the limits of the State in which the judgment is rendered. Wisconsin *v.* Pelican Ins. Co., 127 U. S., 265; Commonwealth *v.* Green, 17 Mass., 515; Sims *v.* Sims, 75 N. Y., 466; National Trust Co. *v.* Gleason, 77 N. Y., 400; Story on Conflict of Laws, §92; I Greenl. Ev., §376. It follows that the conviction of Martin in North Carolina did not make him incompetent to testify on the trial of this case."

The case of *Ormes* v. *Dauchy,* 81 N. Y., 443, involved a contract made in New York to advertise a lottery. The

defendants set up as a defense that by the contract they agreed to print and publish in various newspapers in the State of New York and elsewhere, notices showing where tickets could be purchased in a lottery owned and conducted by a Virginia corporation, and that the contract was illegal and void under the statutes of New York relating to lotteries, and that no recovery could be had for that reason. The statute was as follows:

> "No person shall by printing, writing or in any other way, publish an account of any such illegal lottery stating when or where the same is to be drawn, or the prizes therein, or any of them, or the price of a ticket or share therein, or where any ticket may be obtained therein, or in any way aiding or assisting in the same. Whoever offends against this provision shall be deemed guilty of a misdemeanor," &c.

No evidence was given of any publication in any newspaper in the State of New York. The Court below denied a motion to dismiss the complaint. Judge Miller said (448):

> "There was no error committed by the judge in denying the motion to dismiss the complaint, unless the contract to advertise in other States was illegal and void. This, we think, was not the case in this State. In Charles *v.* The People (1 Comst., 184), which arose upon writ of error upon a conviction upon an indictment for a violation of the statutes cited, Bronson *J.*, says: 'Our legislature has no extra-territorial jurisdiction; and when it forbids, in unqualified terms, the doing of an act, it must always be understood that the thing is only forbidden within this State.' The *publication*, therefore, *outside of the State was not within the prohibition of the statute of this State;* and as there

is no proof that the law of any other State was violated, and as the law will not presume an agreement void as illegal, or against public policy, when it is capable of a construction which would make it consistent with the laws and valid, it cannot be considered as illegal. (Curtis *v.* Gokey, 68 N. Y., 304). Even if it be conceded that at common law lotteries are nuisances and illegal, and that the presumption is that the common law prevails in other States, this rule cannot be invoked to sustain a defense to a contract which was legal and valid in the State where it was made."

In *Van Voorhis* v. *Brintnall,* 86 N. Y., 18, a statute of New York provided that no second marriage shall be contracted by any person during the lifetime of any former husband or wife of such person, unless the marriage with such former husband or wife shall have been dissolved for some cause other than the adultery of such person, and that every marriage contracted contrary to this provision shall be absolutely void. Similar provisions were contained in other statutes. It appeared that a person who was forbidden under the statute above quoted to marry again, entered into a second marriage in Connecticut where it was valid. The parties to this marriage were both residents of New York, and went into Connecticut for the purpose of evading the New York law. It was held that the New York statute had no force in Connecticut and that the marriage was a valid one, Judge Danforth saying (31):

"The words of the statute are general; in themselves they contain no limitation. But we have been referred to no case and I think none can be found, where such general words have been interpreted so as to extend the action of a statute beyond the territorial authority of the legislature; and it is only

by extending it that our courts can take cognizance of acts there committed."

In *Western Transportation & Coal Co.* v. *Kelderhouse*, 87 N. Y., 430, it appeared that a man named Ingram had given two notes secured by a mortgage on a steamer through the plaintiff, a Michigan corporation, which transferred the notes and the mortgage to a Detroit bank. On plaintiff's requesting an extension, one was given on condition that security be furnished and 10% interest be paid. To this Ingram agreed. The notes were not paid and after maturity the bank foreclosed the mortgage in New York courts. Ten per cent. interest was usurious in New York, but not in Michigan. Judge Danforth said (435):

"The first ground of defense has been fully met by the finding that the notes were not tainted with usury, and this is clearly so, if, as is also found, they were given in execution of a contract made, not in Buffalo, but in Michigan, and with reference and subject to the laws of that State.

"It is very well settled that penal laws have no extra-territorial force (Charles *v.* The People, 1 N. Y., 180; Ormes *v.* Dauchy, 82 *id.*, 443); and the statute of New York, regulating the rate of interest, is merely a penal law. It is not claimed that the law of Michigan invalidates the contract."

In State *v.* Shattuck, 38 Atl. Rep., 81, the defendant, an unmarried woman, was indicted for committing adultery with a married man. It appeared that the man's first wife was still living, and had obtained a divorce from him in Vermont. The laws of Vermont prohibited remarriage by the guilty party to a decree of divorce during the life of the former spouse, and in the decree of divorce by which Coburn (the person with whom

defendant was charged to be guilty) was divorced from his former wife, he was prohibited from marrying again during her life. Coburn and the defendant went from Windsor, Vermont, to Claremont, New Hampshire, and were there married by a clergyman. Immediately thereafter they returned to Windsor, Vermont, where they have lived ever since. The statute of New Hampshire imposed no restraint upon remarriage by the guilty party to a decree of divorce. It was held that the Vermont statute had no operation in New Hampshire, although it was perfectly general in its terms, and prohibited absolutely the guilty party in divorce proceedings from remarrying. Judge Rowell said:

> "*The language of our statute is general, and it is a fundamental rule that no statute, whether relating to marriage or otherwise, if in the ordinary general form of words, will be given effect outside of the state or country enacting it. To bind even citizens abroad, it must include them, either in express terms or by necessary implication.* Hence, if a statute, silent as to marriages abroad, as ours is, prohibits classes of persons from marrying generally, or from intermarrying, or declares void all marriages not celebrated according to prescribed forms, it has no effect upon marriages, even of domiciled inhabitants, entered into out of the state."

There is a multitude of authorities holding that in the absence of an intention clearly expressed, the presumption is that a statute is not designated to operate beyond the territorial limits of the state enacting it.

> 26 Am. & Eng. Ency. Law (2nd Ed.), pp. 643, 644, title Statutes, and cases cited.

(b) The Copyright Statute.

The section of the copyright act under consideration

is in general terms and requires the prescribed notice to be inserted "in the several copies of every edition published" (Rev. Stat., Sec. 4962). There is no specific provision showing an intent to make the statute applicable to editions published abroad and beyond the territorial jurisdiction of the United States. In accordance with the general rule, therefore this statute has no application to books published in foreign countries, but must be construed as if it contained in express words the qualification, "within the United States," following the word "published." Certainly, the words "in this or any foreign country" cannot be read into the statute by judicial interpretation, and that is what appellant is asking this court to do.

There are many obvious considerations which show that the requirement as to inserting a notice in the several copies, was not intended to apply to books published and circulated abroad. These considerations may be enumerated as follows:

1. Other sections of the Copyright Act, which are in *pari materia* with this section do not apply to books published abroad, and hence this section must be construed in the same way.

2. The statute expressly authorizes publication abroad, under a foreign copyright, in accordance with the foreign law, and hence such a publication does not work a forfeiture of the American copyright.

3. The object of requiring a notice of copyright would not be subserved by inserting it in editions published abroad, and which cannot be lawfully imported into this country.

4. The form of the prescribed notice shows that it was not intended to be inserted in foreign books.

5. The owner of the copyright cannot control the

foreign publication, and should not be penalized for consenting to what he could not prevent.

6. The copyright statute is a system of local regulations applicable only to publications within the jurisdiction, and the general language used in various sections is either expressly or impliedly so limited.

These points will be considered in order.

1. Other sections of the Copyright Act, which are in pari materia with this section, do not apply to books published abroad, and hence this section does not apply to books published abroad.

It is a settled rule that in construing a section of an act, regard must be had not alone to the language of that particular section, but also to other clauses and sections of the same act, and that a construction should be adopted which makes the whole act stand consistently together.

> 26 Am. & Eng. Ency. Law (2nd Ed.), p. 616, title *Statutes.*

General words, whose application is difficult or unreasonable in a full and literal sense, will be limited or qualified in accordance with the use of words of like import in other sections of the same act.

> Covington *v.* McNickle, 18 B. Mon. (Ky.), 286.
> Blackwood *v.* Reg., 8 App. Cas., 94.
> Rex *v.* Poor Law Commissioners, 6 Ad. & El., 1; 33 Eng. Com. L., 11.
> Gandy *v.* Belting Co., 143 U. S., 592.

Chief Justice Marshall said:

> "That a law is the best expositor of itself; that every part of the act is to be taken into view for the

purpose of discovering the mind of the legislature; and that the details of one part may contain regulations restricting the extent of general expressions used in another part of the same act, are among those plain rules laid down by common sense for the exposition of statutes which have been uniformly acknowledged."

Pennington *v.* Cox, 2 Cranch. (U. S.), 52.

Words omitted from one section may be supplied by construction with a view to other parts of the statute.

Brinsfield *v.* Carter, 2 Ga., 143.

Burke *v.* Monroe County, 77 Ill., 610, wherein the word "city" in a statute was expanded by construction to include "all incorporated towns and cities," this phrase having been used in a previous section of the statute.

In view of the foregoing elementary rules of statutory construction, the words in Section 4962 requiring a notice of copyright in "the several copies of every edition published" must be qualified by the addition of the words *"in the United States,"* because *(a)* this is the construction of Section 4963 which forbids the insertion of a false notice, *(b)* this is the construction of Section 4952 which provides for a notice of copyright by foreign authors, *(c)* this is the construction of Section 4954 providing for notice of renewals of copyrights, and *(d)* the history of this section shows that this was the intent, as this was the rule under the early law and no statute has attempted to change the law in this respect.

(a) Section 4963 provides:

"Every person who shall insert or impress such notice * * * in or upon any book, etc., * * * for which he has not obtained a copyright * * *

shall be liable to a penalty of one hundred dollars." * * *

This language as to inserting a false notice is fully as broad as the language of Section 4962 as to inserting a truthful notice. The two clauses are *in pari materia* in every respect, and the broad language of one section must receive the same construction as the equally broad language of the other.

In *McLaughlin* v. *Raphael Tuck Co.*, 191 U. S., 267, it was held by this court that notwithstanding this broad language Section 4963 had no extra-territorial operation, and did not apply to a case where the false notice was affixed in a foreign country, and the article with the false notice was subsequently imported and sold in this country. The Supreme Court affirmed the decision of the Circuit Court of Appeals for the Second Circuit (115 Fed., 85), where Judge Wallace said:

> "Treating the insertion of the copyright notice in Germany as the act of the defendant, the act was not within the purview of the statute. The penal laws of one state or sovereignty can have no operation in another. As said in *Flash* v. *Conn.*, 109 U. S., 37, 76, 'They are strictly local and affect nothing more than they can reach.' In *Clark* v. *People*, 1 N. Y., 180, the court said: 'Our legislature has no extra-territorial jurisdiction; and when it forbids in unqualified terms, the doing of an act, it must always be understood that the thing is only forbidden within this state.'"

This decision should be decisive of the question here presented. The two sections are parts of the same statute. Both deal with the matter of the statutory notice. Both contain the same general language and neither expressly limits its operation to the boundaries of the United States. Yet this court has said it must be so lim-

ıted. If the insertion of a false notice in foreign published books is not prohibited by Section 4963, under penalty of $100, neither is the omission of the notice prohibited by Section 4962, under penalty of a forfeiture of the copyright.

No distinction can be drawn between the two sections upon the ground that one is a penal statute while the other is not. Section 4962 provides: "No person shall maintain an action for the infringement of his copyright unless he shall" insert the required notice. Having obtained a copyright, failure to insert the notice works a *forfeiture* of the right of action.

Thompson *v.* Hubbard, 131 U. S., 123.

Statutes creating forfeitures are in all respects construed and treated as penal statutes.

In *Jollie* v. *Jaques,* 1 Blatch. (U. S.), 618, 621, Fed. Cas., 7437, the forfeitue of a copyright for non-compliance with the statute was treated as a penalty. In this case it was held that a failure to deliver a copy of a copyrighted book to the Smithsonian Institution, as required by Act of August 10, 1846, did not invalidate the copyright. Judge Nelson said:

> "It would be a violent construction of the provision to annex this *penalty* by judicial interpretation. Every sound rule in the construction of statutes is against it. Courts lean against the enlargement of penal statutes beyond the fair and necessary import of their terms; *much more will they lean against the creation of a forfeiture* by implication, in the absence of any words indicating such intent."

In *Harper* v. *Donohue,* 144 Fed., 491, 498, this section (4962) in regard to notice was construed as imposing a *forfeiture,* and it was declared that *"forfeitures are strictly construed."*

Construction of Statute.

The same consideration which led this Court to hold that Section 4963 had no extra-territorial force, require a like holding as to Section 4962, and hence no notice is required in books published abroad.

(*b*) Section 4952 (as amended by Act of March 3, 1905), provides for the copyrighting in this country of books in foreign languages by foreign authors. This section is in part as follows:

> "Whenever the author or proprietor of a book in a foreign language * * * shall deposit one complete copy of the same * * * in the Library of Congress, * * * within thirty days after the first publication of such book in a foreign country and shall insert in such copy, and *in all copies of such book sold or distributed in the United States* * * * a notice of the reservation of the copyright * * * in the following words: '* * *.' and shall within twelve months after the first publication of such book in a foreign country, file the title of such book and deposit two copies of it * * * printed from type set within the limits of the United States, or from plates made therefrom, *containing a notice of copyright, as provided by the copyright laws now in force, he and they shall have during the term of* twenty-eight years * * * the sole liberty of printing, reprinting, publishing, vending, translating, and dramatizing the said book." * * *

By the express language of this section, the special notice of reservation of copyright in foreign books copyrighted in this country need be inserted only in such copies as are "*sold or distributed in the United States.*" No notice whatever is required in copies published and sold abroad, during this first year of provisional protection. Before the expiration of one year after publication, the foreign author must deposit two copies

printed from type set within the United States, or from plates made therefrom, and then he must, *in place of the prescribed preliminary notice,* insert the usual notice required by the copyright laws now in force. The *form* of the notice is changed after the first year, but not the *place* where it must be given, which is on the title page, or the following page of all copies sold or distributed in the United States. Must the foreign author, under this section, insert the American notice in the foreign edition, published after the expiration of the first year? Clearly not. The two provisions as to notice in this section must be read together, and both must be limited to copies "sold or distributed in the United States." The rules of construction, already referred to, are conclusive upon this point. Both notices are required for the same purpose, and there is no reason for requiring one to be inserted in books published abroad, and not requiring the other to be inserted. There is a strong presumption against absurdity in the construction of statutes.

> Federal Statutes Annotated, Vol. 1, p. LII., title, *Statutory Construction,* and numerous cases there cited.

It would be very remarkable for Congress to provide that a foreign book, copyrighted in this country, need not contain any copyright notice in foreign editions published during the first year, but that after that, a notice must be inserted in every foreign as well as every domestic copy.

Under this section, which gives the author or proprietor of a book first published abroad in a foreign language thirty days after publication abroad in which to file the title in the United States, it is obvious that for the first thirty days there can be no truthful notice of the American copyright in the foreign published copies

for there is no American copyright of which notice can be given, and books published abroad during this period and without any notice of the American copyright protection can lawfully be imported into this country. Therefore, for the first thirty days, in such books published abroad, there can be no notice of American copyright. Then under the express terms of the statute, for the first year there need be no notice of the American copyright protection, except in books sold or distributed in the United States, yet unquestionably the American copyright remains valid, and one who produces an imported foreign copy though without the notice is an infringer.

Appellant's construction of this section of the statute (Appellant's brief, pp. 32, 33) is wholly inadmissible. It reads out of the statute the words "sold or distributed *in the United States*" and substitutes therefor the words "sold or distributed *in the United States or any foreign country.*" The foreign publisher is, of course, responsible only for such copies as have been sold or distributed in the United States by himself or with his consent. If he brings in the foreign book, such book *when brought in* must bear the notice, irrespective of where it was manufactured. But until so brought in by the proprietor, the foreign book, by the express terms of the statute, need not contain the notice. Until his book is brought by him within our boundaries, our statute does not pretend to in any way regulate what must be upon it. Importation by others, without the consent of the proprietor is prohibited, and is an infringement of his copyright. (Section 4964.) The proprietor is not responsible for the absence of a notice in an infringing copy. (Harper *v.* Donohue, 144 Feld., 491.)

The law is, therefore, that in the case of foreign books in foreign languages, copyrighted in this country, a notice of copyright must be inserted in every copy sold or distributed by the proprietor in the United States.

but no such notice need be inserted in copies sold or distributed abroad. This is the only permissible construction of this section. (Sec. 4952 as amended March 3, 1905.)

This section is *in pari materia* with section 4962. Both deal with the notice required to preserve the American copyright. Section 4952, as amended, applies to foreign books first published abroad in foreign languages. Section 4962 applies to books first published in this country. The notice required by both sections is the same. The object or purpose of the notice in each case is the same. There is no reason or basis for making any distinction between the two cases. What possible reason could there be for requiring a notice in foreign editions of books first copyrighted here, and not requiring such a notice in the case of books first published abroad and subsequently copyrighted here? *There is a presumption against distinctions without a difference.*

> "When the legislature has clearly laid down a rule for one class of cases, it is not readily to be supposed that in its choice of words and phrases, or in the enactment of various provisions in the same act, it has prescribed a different rule for another class of cases, within the same reason as the first; a construction which will avoid such senseless discriminations should be adopted where the meaning of the statute, as evidenced by its language, is debatable. This is simply the general principle that all statutes should receive a reasonable construction stated in more concrete form, and it is applied with great persuasiveness in very many cases."
>
> Federal Statutes Annotated, Vol. 1, p. LVIII, preliminary article on *Statutory Construction*, citing many cases.

It being clear from section 4952 (as amended Mar.

3, 1905), that Congress did not intend to require any notice of copyright in foreign editions of foreign books subsequently copyrighted here, it must be presumed that Congress did not intend, by the general language of section 4962, to require a notice in foreign editions of books first copyrighted here, especially as this presumption is in entire harmony with the language used, as well as with all recognized rules of statutory construction.

There is still another principle of statutory construction which requires these two sections to be construed in like manner, and that is the *presumption against the unequal operation of statutes.* Nothing but clear and unmistakable language will warrant a court in a construction which will produce injustice by the unequal operation of the statutes.

> Lionberger *v.* Rouse, 9 Wall. (U. S.), 476.
>
> Smith *v.* Townsend, 148 U. S., 590.
>
> King *v.* Cornell, 106 U. S., 389, wherein the court, construing the Removal Act, avoided a construction which would have enabled an alien to remove his separate controversy as against a citizen, while a citizen would not have the same privilege against him.

If appellant's construction of section 4962 is correct, an American citizen cannot publish or sell his books abroad, except burdened with the necessity in each foreign country where he may, either by himself or through others, publish his book, of complying with all the requirements of the American copyright law. But an alien may copyright his book here, and still continue to publish and sell it abroad not burdened with such restrictions. Such a construction cannot be adopted if any other is possible.

This amendment of Mar. 3, 1905, is practically *a legislative construction* and declaration of the legislative intent in regard to notice.

Notice in Foreign Editions.

U. S. *v.* Freeman, 3 How. (U. S.), 556;
Morle *v.* Bidwell, 130 Fed., 334.

(c) Section 4954 provides for a renewal of copyrights for a second term of 14 years. Upon the matter of notice of renewal, this section is as follows:

> "And such person shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more *newspapers printed in the United States*, for the space of four weeks."

This section is absolutely *in pari materia* with section 4962, and it has remained substantially unchanged from the time of the first Copyright Act in 1790. The notice to be published in newspapers is for the same purpose as the notice to be published in the book itself. Construing section 4962 in the light of section 4954, it clearly appears that the notice is only required in books published in the United States, for it is only in the United States that Congress has deemed a notice of copyright necessary.

(d) The history of this section shows that it was the intent of Congress to require the giving of the notice only in books published in the United States. The original copyright act of May 31, 1790, Sec. 3. (1 Stat. at Large, 124-125), after requiring deposit with Clerk of the District Court, provides:

> "And such author or proprietor shall within two months from the date thereof, cause a copy of the said record to be *published in one or more of the newspapers printed in the United States for the space of four weeks.*"

This is the same as the provision of the present act as to notice of renewals. No other notice was required.

Construction of Statute.

The act of April 29, 1802 (2 Stat. at L., 171, 172), Section 1, referring to Act of 1790, provides:

> "He (the author or proprietor) shall in addition to the requisites enjoined in the 3rd and 4th sections of said act, if a book or books, give information by causing the copy of the record, which by said sections he is required to publish in one or more newspapers, to be inserted at full length in the title page, or in the page immediately following the title of every such book or books." * * *

This act refers back to Sec. 3, of the Act of 1790, and *does not use the words "in the United States"* in connection with "newspapers," but it is obvious that this is meant, and it is equally obvious that this statute, which was the first to require notice in the book itself refers only to *books* published in the United States as well as *newspapers* there published.

The Act of Feb. 3, 1831, 4 Stat. at Large, 436, by Sec. 4, required the deposit of a copy of the title with the Clerk of the District Court and Sec. 5, provided that notice shall be inserted in the several copies of every edition published, etc.

This is substantially the present statute. It amended previous acts simply by dropping out the requirement of notice in newspapers. No other change was made, the purpose remains unchanged, and the construction of the requirement as to notice must be the same under this act as under previous ones in regard to place of publication.

This history of the statute is a complete answer to appellant's argument that "if Congress had intended that the copyright notice of Section 4962 should apply only to books published in the United States, it would have inserted such words of limitation in Section 4962, as it did in Section 4954." (Appellant's brief, p. 34.)

(2) *The statute expressly authorizes publication*

abroad under a foreign copyright, in accordance with the foreign law, and hence such a publication does not work a forfeiture of the American copyright.

The copyright statute has been amended from time to time by granting copyright privileges to foreign authors in exchange for similar privileges granted to our authors in foreign countries.

The so-called "International Copyright Law" of March 3, 1891, which amended former copyright enactments so as to permit foreign authors to copyright their works in this country, expressly provides as follows:

> "This act shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits citizens of the United States of America the benefit of copyright on substantially *the same basis as its own citizens;* or when such foreign state or nation is a party to an international agreement which provides for *reciprocity in the granting of copyright,* by the terms of which agreement the United States of America may, at its pleasure, become a party to such agreement. The existence of either of the conditions aforesaid shall be determinated by the President of the United States, by proclamation made from time to time, as the purposes of this act may require." (Sec. 13.)

The amendment of March 3, 1905, extending the privilege of copyright to books in foreign languages first published abroad, contains the same provision.

Under these provisions, the United States has established copyright relations by proclamation of the President, with many foreign countries, including Great Britain and her possessions.

> 27 Stat. at Large 981, 982. Proclamation of July 1, 1891.

It appears, therefore, that owners of American copyrights are expressly authorized to copyright their works abroad, *in accordance with the laws of the foreign country.*

It is inconceivable that Congress intended that the owner of an American copyright who took advantage of this provision of the law and copyrighted abroad, complying strictly with the foreign law, thereby lost his copyright in this country unless the foreign books also complied with all the requirements of the American statute. There is nothing in the statute to support such a construction, and only the plainest possible language could justify it. If Congress had so intended, it would have been easy to say so. If a book is copyrighted in half a dozen countries, must it in each country comply with the statutory requirements of all? Such a requirement might be impossible of performance, and the end intended, *i. e.*, an international copyright, might be defeated. At all events, the statute should not be construed so as lay a trap for owners of American copyrights who seek the benefit of the law, and copyright their works abroad as well as in this country.

"The provisions of the copyright law are to be broadly and liberally construed to insure to the author the product of his brain." per Jenkins, *J.*, in *Holmes* v. *Donohue*, 77 Fed., 179. Quoted with approval by Sanborn, *J.*, in *Harper* v. *Donohue*, 144 Fed., 491. And piracy such as is here attempted should receive judicial rebuke.

The plain intent of the whole law is that a book may be copyrighted in several countries. In each country, it is sufficient to comply with the copyright laws of that country. If this is done the copyright is valid in each country. Any other construction is too unreasonable to contemplate.

This was the view taken by the Circuit Court of Appeals. Thus it said in its opinion:

"It is true that the book so copyrighted and pub-

lished in the foreign country contains no notice that a copyright exists in the United States. The law of England does not require that it should contain such notice, nor such a notice of its own copyright. The English copyright is valid in that country. It was obtained by appellant a citizen of the United States, with both the legislative and executive invitation and sanction of its own country. Shall it now be held by the courts of the United States that because of such invitation and sanction appellant was induced to and did obtain a valid copyright in a foreign nation, it thereby invalidated the one it had obtained in its own country? We do not believe the Congress intended to have their enactments interpreted to an absurdity such as that would be. *It was never intended that the notice of copyright in this country should be inserted in foreign copyright editions of the same book not designed for sale in the United States.* In the case of England, if such conditions were held to have been imposed, the effect would be to burden citizens of the United States with conditions that nation had not cast on its own subjects, and this would be inconsistent with the terms of the proviso of the statute hereinbefore quoted, by means of which these reciprocal rights were effected, to the purpose that if foreign nations should permit citizens of the United States the benefit of copyright on substantially the same basis as its own citizens, then the latter should have like benefits in this country." (146 Fed., 354.)

The above considerations seem conclusive that Section 4962, cannot be construed as requiring a notice of the American copyright in works published abroad under the protection of foreign copyright enactments.

Appellant contends in its brief (pp. 46, 49), that appellee's English copyright is invalid under the English

statute. In the same breath appellant admits and asserts that the validity of the English copyright is not material, and that the sole question is whether the American statute (Sec. 4962), applies to books published abroad, and not imported or circulated in the United States by or with the consent of the American proprietor. If the validity of the English copyright is immaterial in this case, as appellee admits it is, no error can be assigned upon that point. Moreover, before the court can sustain appellant's contention that the English copyright is invalid, it must overturn the entire system of international copyright established between this country and England. This is a serious thing to do in this collateral proceeding. International copyright relations between this country and England were established by proclamation of the President, after consultation with the law officers of the Crown in England. Our statute expressly makes the President the judge of when the laws of foreign nations accord to American citizens full copyright privileges, and the operation of the international provisions of our statute are made dependent upon his finding and proclamation of that fact. In accordance with this statute the President has decided, and in most solemn form proclaimed, that American citizens, irrespective of residence, are accorded full copyright privileges and protection in Great Britain. This decision is final, and conclusive in this country. But as before stated the validity of the English copyright is immaterial. In this brief, and in the opinion of the Circuit Court of Appeals, the international provisions of the statute are referred to largely to show that Congress contemplated and authorized the publication abroad of American copyrighted books without any notice of the American copyright. It is clear that Congress authorized appellee to publish and copyright its book in Engand in accordance with the Engish law, which law does not require the insertion of any notice of copyright. Appellee did so publish and copyright its

book in England, and as the Circuit Court of Appeals pointed out, it would be the height of absurdity and injustice to hold that it thereby invalidated its American copyright. This argument is in no way affected by the fact that, owing to certain provisions in the English statute, the copyright which appellee apparently obtained in England, may ultimately prove to be invalid. It was none the less obtained, as the Circuit Court of Appeals stated, "with both the legislative and executive invitation and sanction" of this country. It is not in any way admitted, however, that appellee's English copyright is invalid for any reason.

(3) *The object of requiring a notice of copyright would not be subserved by inserting it in editions published abroad.*

It is a fundamental rule that statutes must be construed with primary reference to the object sought to be accomplished.

The object of requiring a notice of copyright to be inscribed upon a copyrighted article is to give notice of the copyright to the public, and thus prevent a person from being punished who ignorantly and innocently reproduces such articles without notice of the protecting copyright. It is for the benefit of the public.

Sarony *v.* Burrow-Giles Lith Co., 17 Fed., 591; *affirmed,* 111 U. S., 53.
Snow *v.* Mast, 65 Fed., 995.

The copyright of which notice must be given is the American copyright. The public to whom notice is intended to be given is the American public. Congress legislates only for the American public.

It is only where the right exists that the necessity for the warning exists. There can be no reason for warn-

ing anybody to respect a right in a country where there is none.

An American copyright has no extra-territorial existence; it cannot be enforced in England and consequently there is no reason for warning the English public against violation of it. The English public cannot be subjected to any penalties under the American statute. The American public on the other hand cannot be misled by the absence of an American notice in the English book, for as shown elsewhere (*post*, p. 83), importation of copies of it into this country is forbidden by our statutes, with certain limited and immaterial exceptions. The reason for the rule, therefore, entirely fails, and the reason failing the rule fails with it.

The importation of such book being prohibited by the statute, (Sections 4956 and 4964), if done without the consent of the proprietor, *it constitutes an infringement of his copyright*. The proprietor does not lose his copyright because an infringer has omitted the notice, nor even where a licensee has done so without his consent.

American Press Assn. *v.* Daily Story Pub. Co., 120 Fed., 766.

Harper *v.* Donahue and Ogilvie, 144 Fed., 491.

In addition, residents here may be deemed affected with notice by the insertion of it in all copies of the books published here (Cf. Sec. 4952, as amended by Act of Mar. 3, 1905, *ante*, p. 36), and if, as in the case at bar, a resident, with piratical intent, imports a copy of the foreign book, he is not within the mischief of the statute, and is entitled to no protection.

Books imported with the consent of the proprietor are, in legal effcet, *published here* by him, and in such books the prescribed notice must be inserted.

As the insertion of the notice in foreign editions would be thus wholly vain and useless, and would not subserve

the object of the statute, it cannot be presumed that Congress has required it, under penalty of a forfeiture of the right of action for copyright infringement.

It should be noted that the requirement of notice is merely *negative*. It is not one of the conditions for obtaining a copyright. It is merely provided that no action shall be maintained unless the required notice is given. It follows that the *notice was intended to be co-extensive with the remedy*. The remedy is limited to the United States, and hence the requirement of notice is also limited to the United States.

In seeking the intent of Section 4962 regard must be had to the situation at the time its provisions first came into the law. This section was not amended or changed in any respect by the International Copyright Law of 1891. Its present language is that of the Act of June 18, 1874 (18 Stat. at Large, 78, 79), and so far as the vital words, "the several copies of every edition published," are concerned, this section has remained substantially unchanged since the Act of 1802, which was the first to require a notice to be inserted in the book itself. This section means the same since the Act of 1891, as it meant before, because it was left unchanged. Upon the argument below it was apparently conceded that if there were an absolute prohibition on importation, the notice would not be required in foreign books, because utterly useless and not within the purview of the statute. But *when this requirement of Sec. 4962, first came into the law*, and at all times thereafter down to the Act of 1891, *there was such an absolute prohibition of importation* without the written and witnessed consent of the proprietor of the copyright. The copyright law constituted a "ring fence" around this country, and excluded absolutely all books the subject of American copyright sought to be imported without the consent of the proprietor of the copyright. (Sec. 4964 and its predecessors. See *post*, pp. 83 *et seq.*)

If the present question had come up for decision prior

to 1891, it is not open to doubt that Section 4962 would have been construed as not requiring the notice to be inserted in books published abroad and not imported into this country with the consent of the proprietor. This is still the law, for Section 4962 has not been amended.

The question of the importation of copyrighted books is hereafter separately considered. (See *post*, p. 83.) But it is convenient to anticipate a portion of that discussion.

The law is clear that unauthorized importations of copyrighted books are illegal and prohibited, unless they fall within the specified exceptions named in Section 4956, as amended by the Act of 1891. None of these exceptions to the prohibition existed when Section 4962 was enacted, and consequently should not affect the construction of that section. The requirement as to notice must be construed just as though the law absolutely and without exception prohibited importation of copyrighted books, because that was the state of the law when Section 4962 was first enacted.

It is certain that in making the amendments of 1891, Congress had no idea that it was changing the law as to the requirement of notice. The section in regard to the notice (Sec. 4962) was deliberately left untouched. It did not require the insertion of the notice in foreign books before the act of 1891, and it does not now require it.

Appellee argues that under the exception clause in Section 4956, as amended, some copies of the foreign edition may get into this country, and hence that the foreign books must have the notice. But books brought in under this exception cannot be lawfully sold or circulated in the United States, as is shown hereafter, and hence the absence of a notice in such imported copies can do no harm. As Attorney General Griggs has pointed out (23 Op. Atty. Gen., 353), "the exception to prohibition of importation rests upon liberal reasons

of polity and involves a concession against exclusive rights both narrow in scope and meritorious as encouraging enlightened learning, or operating on special and restricted individual or corporate privileges."

The pertinent portions of the exceptions referred to authorize (1) the importation of two copies by any person "*for use and not for sale;*" (2) the importation of to copies "*in good faith for the use of* any society incorporated or established for educational, philosophical, literary or religious purposes, or for the encouragement of the fine arts, or for the use or by order of any college, academy, school, or seminary of learning in the United States, *subject to such regulations as the Secretary of the Treasury shall prescribe.*" (Paragraph 515 of the Tariff Act of 1890, referred to in Sec., 4956). (3) "Books or libraries or part of libraries * * * of persons or families from foreign countries, *if actually used abroad by them* not less than one year, and not intended for any person or persons, nor for sale." (Tariff Act of 1890, par. 516, referred to by Sec., 4956). (4) Books "which shall have been printed and bound or manufactured more than twenty years at the date of importations." (Paragraph 572 of the Tariff Act of 1890, referred to by Sec. 4956.) If these restrictions of the law upon the exception from prohibition of importation are not violated, the absence of the notice in such book so imported is of no importance to anybody. If such restrictions are violated the importation becomes unlawful and an infringement. The absence of the notice in an infringing copy is immaterial.

American Press Assn. *v.* Daily Story Pub. Co., 120 Fed., 766.

Harper & Bros. *v.* Donahue & Oglivie, 144 Fed., 491.

None of these exceptions authorize the general commercial importation of books. They are all strictly

limited, and if the law is obeyed no harm can come from the absence of a notice in the imported book. Even the broadest of these exceptions, viz., the one referring to books "which shall have been printed and bound or manufactured more than twenty years at the date of importation," cannot result in a commercial importation of such books. The statute does not authorize the importation of all books twenty years after the copyright has been taken out. It refers only to copies of books that have been manufactured, printed and bound for twenty years.

The mere fact that a few copies of the foreign book may get into this country without the notice is of no moment. A notice of copyright in the book is not inherently necessary. Copyright statutes do not always require a notice. The English law does not require a notice, and our own first copyright act, that of 1790, did not require a notice in the book. The exceptions in the Act of 1891 authorize the limited importation for use and not for sale of even *piratical copies*, and these would naturally contain no notice. In fact, in so far as the exception clauses in Section 4956 modify the prior absolute prohibition of unauthorized importations, and authorize a limited importation without the consent of the proprietor, to that extent they also except such books from the operation of Section 4962. *Section 4962 properly construed, requires the statutory notice only in books published or circulated in the United States by or with the consent of the proprietor.* Books imported by others under the exception clauses of Section 4956 do not fall within this class and need not contain the notice. Piratical copies imported without the proprietor's consent need not contain the notice, and why should any others imported without his consent? Every one is presumed to know the law, and if a foreign book lawfully imported under the statute is seen in this country, the beholder must take notice of the statute allowing its importation.

By procuring an American copy, or applying at the Copyright Office, he can readily ascertain whether it is covered by an American copyright.

As was well said by the Circuit Court of Appeals for the Seventh Circuit, in a case where one had innocently reproduced a copyrighted work from which the notice had been omitted without authority:

> "In the case before us there was no imposition practiced upon the appellant. There was no inducement held out by any one. There was no solicitation of its action. The appellant has of its own motion appropriated to itself the literary production of another, supposing indeed that it had the legal right to do it. It does that, however, at its peril, and the case is not different from that of an innocent copying of a piratical publication of a copyrighted work, or the innocent purchase of a horse to which the seller innocently supposed he had good title. A copyright article published without authority is not 'current information,' free for the use of all." American Press Ass'n *v.* Daily Story Pub. Co., 120 Fed., 769.

Moreover, so far as the above exceptions in the statute authorize the importation of books without the consent of the proprietor, for special and limited purposes, the publication thereby affected, if it be deemed one, is a special and limited publication, and therefore notice in such books is not required. The rule is well established, and was recently declared by this court, that a limited, as distinguished from a general, publication, does not require the statutory notice in order to preserve the rights of the copyright proprietor.

American Tobacco Co. *v.* Werckmeister, *unreported*, (No. 28 October Term, 1907; opinion rendered December 2, 1907).

At all events it is not broadly true as contended by

appellant that if a foreign book turns up in this country without a notice of the American copyright upon the title page, or the page immediately following, that book is public property in this country, and may be reproduced by anyone. This position has been dealt with elsewhere. Books published abroad by foreign authors, and copyrighted here under section 4952 as amended, certainly need contain no notice of American copyright during the first year of publication, for the statute expressly so states. It is also held that the copies of an American book deposited with the Librarian of Congress to complete copyright need not bear the notice.

Osgood *v.* Aloe, 69 Fed., 291, 293.

These books may be seen in this country without the notice of copyright, but that fact does not authorize any one to reproduce them, and if any one does so without authority of the proprietor, it is an infringement of the copyright.

(4) *The form of the prescribed notice shows that it was not intended to be inserted in foreign books.*

The very form of the notice prescribed by the statute as sufficient would not, in fact, give notice of a copyright under the laws of the United States, if impressed in a foreign book. On the contrary, it would be false and misleading.

The prescribed notice is as follows:

"Copyright 1892 by G. & C. Merriam Co."

This notice, if placed in an American book, gives notice of an American copyright. But if the same notice is placed in an English, or French, or German book, what is there to indicate that it refers to an American copyright? It would amount to a claim of an English, or French, or German copyright, in which sense it would be false, and

at all events would not subserve the purpose of the required notice, which is to give notice of an American copyright. It serves this purpose only when placed in books published in the United States, and therefore, is only required in such books.

The alternative form of notice permitted by the statute, is still less adapted to give information of copyright to any foreigners. It is as follows:

> "Entered according to Act of Congress, in the year —— by A. B., in the office of the Librarian of Congress." (Rev. Stat., Sec. 4962.)

An earlier form of notice was:

> "Entered according to Act of Congress, in the year ——, by A. B., in the Clerk's office of the District Court of ——." (Act of 1831.)

Clearly Congress did not intend these notices to be inserted in foreign books as a notice of the American copyright. The word "copyright" does not appear in the form prescribed. They are intelligible and useful only when appearing in domestic books. If inserted in a book published in a foreign country they cannot possibly convey the information that the book is the subject of an American copyright. The "entry" might well be for various purposes other than copyright protection,—*e. g.*, censorship or revenue.

When Congress provides for a notice to foreigners, it prescribes a form of notice that will be understood by them and which points distinctly to rights reserved in this country. This is illustrated by the recent Trademark Act, which provides for the registration of trademarks used in interstate and *foreign commerce*. That act provides (Sec. 28), for a notice of the registration of trademark in the following form:

"Registered in U. S. Patent Office."
or
"Reg. U. S. Pat. Off."

If Congress had intended the copyright notice to be used abroad it would surely have required the words "United States," or the abbreviation "U. S." to have been used as part of the notice.

(5) *The owner of the copyright cannot control the foreign publication, and should not be penalized for consenting to what he cannot prevent.*

In *Thompson* v. *Hubbard*, 131 U. S., 123, the Supreme Court said:

> "The plain declaration of the statute is that no person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting the prescribed words in the several copies of every edition published. That means, *every edition which he, as controlling the publication*, publishes."

The owner of an American copyright controls by means thereof the publication in the United States only. He can prevent a publication without the required notice in the United States. If, therefore, he publishes in this country without the required notice, it is reasonable, or at least not unjust, that he be held to have forfeited his right of action. If he does not consent, and the publication is piratical, or in violation of the terms of a license, the omission of the notice thereon does not work such forfeiture.

American Press Assn. *v.* Daily Story Pub. Co., 120 Fed., 766.

Harper *v.* Donahue and Ogilvie, 144 Fed., 491, affirmed 146 Fed., 1023.

Notice in Foreign Editions.

It is to be observed that the question of forfeiture is made to depend upon the fact of *consent*, and not alone upon the absence of notice.

The owner of an American copyright does not however thereby control the publication abroad. He cannot prevent a foreign publication. He cannot insist upon the insertion of the notice. His consent to what is done abroad is wholly immaterial. He is powerless effectively to refuse consent. It is, therefore, unjust and unreasonable in the case of foreign publications, to make the question of forfeiture depend upon the fact of consent to what is done abroad. As the statute in question (Sec. 4962) does not in terms require this construction, it cannot be adopted, for it is a universal rule that a statute will not be so construed as to work hardship or injustice, if its terms can be given any other meaning. This rule prevails even against the strict letter of the statute, and much more where, as in this case, there is nothing in the statute which requires such an unreasonable construction.

Hepburn *v.* Griswold, 8 Wall. (U. S.), 607.
Lionberger *v.* Rouse, 9 Wall. (U. S.), 475.
Davis *v.* Bohle (C. C. A.), 92 Fed., 328.
U. S. *v.* Crawford, 47 Fed., 561.
26 Am. & Eng. Ency. Law (2nd Ed.), p. 646, title, *Statutes*, and numerous cases there cited.

Moreover, one object of the statute in imposing a forfeiture cannot be subserved in the case of foreign publications. The law seeks to secure the insertion of the notice by prescribing the penalty of forfeiture in case of omission. In the United States, where the proprietor can control the publication, and where he has a remedy by action, the penalty has the intended effect. But it has no such tendency in the case of foreign publications

which the American proprietor cannot control, and where he has no remedy by action.

It would be unjust and unreasonable to forfeit the right of action for failure to insert the notice in foreign editions, and therefore Sections 4962 should not be so construed, if any other construction is possible.

Appellant argues in answer to the above: "It is immaterial whether the owner of the American copyright can or cannot control the foreign publication of his book. If the publication be made without his consent it is piratical and of no effect." (Appellant's brief, p. 34.) But, on the contrary, it is plainly the law, and has been expressly decided, that the notice need be inserted only in editions controlled by the proprietor of the copyright.

> Thompson *v.* Hubbard, 131 U. S., 123;
> Harper *v.* Donohue, 144 Fed., 491, 498.

This excludes foreign editions.

Neither is it true that a foreign publication, without the consent of the American proprietor is piratical. On the contrary it is, under the laws of both countries, a lawful publication.

Appellant's contention that appellee could control the English publication by means of its English copyright, is without force. It is control by means of the American copyright which alone can be considered in construing the requirements of the American copyright statute. *Non constat* that the American proprietor has a foreign copyright, or perhaps, as in Harper *v.* Donohue, *supra*, the foreign copyright is owned by a different person.

When analyzed, appellant's contention comes down to this: The owner of an American copyright is circumscribed and limited as to his foreign publications, while

all the rest of the world, both citizens and foreigners, are wholly free from such restriction. Appellee's contention is, on the contrary, that the American proprietor may do abroad, without penalty, what all the world may do lawfully and without liability; in other words, that beyond the territorial limits of the United States, the owner of the American copyright is upon precise equality with all the rest of the world. The copyright statute will be searched in vain for even a hint of a contrary intent.

(6) *The copyright statute is a system of local regulations applicable only to publications within the jurisdiction, and the general language used in various sections is either expressly or impliedly so limited.*

This proposition is supported by the general presumption against extra-territorialty, and the other points already stated showing that the sections relating to the notice have no application to publications in foreign countries. But the whole object and purpose of the act, including the operation of other sections, show that the statute was intended as a system of local regulations applicable solely to publications within the limits of the United States, and designed solely to promote the publications of useful works within the United States.

Section 4952 provides that persons who have obtained a copyright shall have the exclusive right to print, publish, translate, dramatize or perform the copyright work.

There is no express limitation here, yet this general language is qualified by implication to such exclusive right "within the United States."

Section 4964 provides that every person who, without consent of the proprietor of the copyright, shall print, publish, import, etc., any copy of a copyright book or shall sell or expose the same for sale shall "forfeit every copy thereof to such proprietor, and shall also forfeit

and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction."

There is no express limitation here, yet every phrase of this section must be read as if the qualification "within the United States" were expressly added.

Section 4965 prohibits reproductions of copyrighted maps, charts, photographs, works of art, etc., and provides penalties.

This entire section must be read with the qualification, "within the United States."

Section 4966 prohibits the unauthorized performance of dramatic or musical compositions.

The unauthorized performance must take place "within the United States," or it is not within the statute, although the language is general.

Section 4967 prohibits the *publication* of " any manuscript whatever" without the consent of the author.

Clearly this must be limited to *publication "within the United States,"* though not expressly so stated.

The whole act is filled with local regulations to be performed "within the United States."

It follows that in the absence of an express intent to the contrary, no section can be construed as having an extra-territorial effect, or as referring to acts done beyond the limits of the United States.

Whenever acts done beyond the limits of the United States affect the copyright it is because the statute expressly so states. Publication abroad before copyright in this country, is the sole act done abroad, which can defeat an American copyright, and this is made so by the express terms of the statute. (Sec., 4956 as amended.)

Appellant's main argument is that as publication abroad before copyright in this country defeats the right to copyright in this country, so publication abroad after copyright in this country, but without a notice of copy-

right, forfeits the copyright previously obtained and perfected. A moment's consideration will expose the fallacy of this argument.

Prior to the amendments made by the Act of 1891, the privilege of copyright in this country was confined to the works of citizens and residents of this country. The law as it then stood, provided as follows:

> "No person shall be entitled to a copyright unless he shall, *before publication*, deliver at the office of the Librarian of Congress, * * * a printed copy of the title of the book," etc. (Rev. Stat., U. S., Sec., 4956.)

It will be noted that this statute is silent as to the place of the publication referred to. But it is admitted that under this statute publication either here or abroad before deposit of the title was a bar to the obtaining of a copyright in this country.

> **Drone, Copyright**, p. 295, 296.
> Boucicault *v.* Wood, Fed. Cas., No. 1693.

But this, instead of subverting, directly supports appellee's contention that the copyright statute is a system of local regulations confined in its operation and purpose to the territorial limits of the United States. The reason why first publication, even in a foreign country, prevents a subsequent copyright is that the chief object of the constitutional provision and the copyright statute based thereon is the advancement of learning *in this country*, which is attained in full measure only by securing first or at least contemporaneous *publication in this country*. When books are published abroad, without copyright here, they become at once available here by importation or republication. The advancement of learning in this country would not be promoted but on the contrary, would be retarded by permitting a subsequent

copyright monopoly to be established in books already given to the world. If a subsequent copyright were possible, there would be no incentive to an early publication and copyright in this country by the proprietor, and others would be deterred from making importations or republications. The copyright monopoly is granted and intended as a reward for the publication *in this country* of useful books, which are thereby made available to the public of this country. The whole object and purpose of the statute would be defeated and not advanced if first or contemporaneous publication to secure copyright were not required to be made in this country. Accordingly the word "publication" in Rev. Stat., U. S., Sec. 4956 (as it stood before the amendments of 1891) must be construed as intending a publication either in this country or abroad, because that construction is the only one consistent with the local character and purposes of the copyright statute.

This question seems not to have been judicially discussed in this country, but it has arisen and been determined in England. The English statutes, like our own Revised Statutes, are silent as to the place where a work must be published in order to be entitled to a copyright. But the law is well settled by the decisions of the English courts that the first publications must be in the United Kingdom. "This doctrine is based on the ground that the chief object of the copyright statute is the advancement of learning in Great Britain, which is attained by securing there the first publication of books."

Drone on Copyright, p. 292 and cases cited in note 4.

In *Rutledge* v. *Low*, L. R., 3 H. L., 111, Lord Chancellor Cairns said:

> "The intention of the act is to obtain *a benefit for the people of this country by the publication to them* of works of learning, of utility, of amusement. * * * The aim of the legislature is to increase the common stock of the literature of the country."

Notice in Foreign Editions.

In *Jefferys* v. *Boosey*, L. R., 4 H. L., 815, where the question was as to the right of copyright in the production of a non-resident alien first published in England, counsel argued:

"That statute was avowedly passed for the encouragement of learning." Whereupon Lord Brougham pointedly asked:

"Do you read it thus,—for the encouragement of learning all over the world"? To which counsel replied:

"No. But whoever possesses and uses learning *here*, to that man the statute applies, *if he gives this country* the benefit of its first production." (P. 832.)

All of the judges who participated in the decision of this great case agreed that first publication must take place in England *in view of the local purpose and operation of the statute*. It is a complete authority in support of the above views.

In 1891 our statute was amended so as to permit foreign authors to copyright their works in this country. Foreign publications were thus specifically in contemplation. It may be that even after foreign authors were thus permitted to secure copyright in this country, the word "published," in Section 4956 would have been construed to still require first publication to be made in this country, as the object of the statute is still to promote the publication of useful works *in this country*. But Congress was not willing to leave this to implication, and specifically required first publication to be made in this country, as a condition of American copyright, by amending Rev. Stat., Sec. 4956 by the addition of the words "in this or any foreign country" after the word "publication." The section as thus amended reads as follows:

> "No person shall be entitled to a copyright unless he shall, on or before the day of publication, in this or any foreign country, deliver at the office of the

Librarian of Congress," etc. (Rev. Stat., Sec. 4956, as amended by Act of Mar. 3, 1891, Sec. 3.)

The local purpose and benefit of the copyright act is thus secured and emphasized. First publication, as well as all the other acts required to secure an American copyright must take place and be performed *in this country.* It is plain that section 4962, which requires insertion of a notice to preserve the copyright, was intended to require such notice only in publications made in this country. *Congress was legislating and granting copyright protection only for works published in this country.* No rule of interpretation will permit any other construction in the absence of express words showing a contrary intent.

Appellant argues:

> "The court would be warranted in reading into Sec. 4962 the words, 'in this or any foreign country,' if such words could add anything to the scope and meaning of such section." (Appellant's brief, p. 20.)

On the contrary, to do so would violate every rule of statutory construction, and would be opposed to the unanimous decision of the numerous cases hereinbefore cited, which hold that *general words in a statute must be limited to acts done within the state,* in the absence of express words extending them to extra-territorial acts. In truth, the court would be justified in reading into the statute the words "in the United States," if such words could add anything to the scope and meaning of such section, for as already shown that is the meaning of the general words used.

That the court would not be justified in reading into section 4962 the words which appellant desires, and which are necessary to its case, is also shown by the fact that Congress deliberately refrained from inserting such

words in section 4962 at the time when it inserted those very words in section 4956 by the amendments of 1891. Prior to the Act of 1891, section 4956 provided that entry for copyright should be made "before publication," and section 4962 provided that the copyright notice should be inserted in "every edition published." The Act of 1891 amended section 4956 by adding the words "in this or any foreign country" after the word "publication," thus showing an express intent to make a prior foreign publication a bar to a subsequent American copyright. Similar words would have been added after the word "published" in section 4962, if it had been intended to provide that a subsequent foreign publication without the statutory notice should work a forfeiture of the American copyright. But they were not so added and this section was not amended in any manner. Congress having thus refrained from adding this qualification to the word "published" in section 4962, although it did add such qualification to the word "publication" in section 4956, at a time when foreign publications were specifically in contemplation, no court would be justified in reading them into section 4962.

When the author has given to the American public the benefit of his work by making first publication here, and by complying here with all the other terms and conditions of the statute, the exclusive right assured to the author as a consideration for so doing should not be divested and taken away by what he subsequently does abroad, and in which the American public has no interest, and by which it cannot be injured.

Appellant argues (p. 18) that the same reasoning which led the courts to hold that the word "publication" as used in Rev. Stat., Sec. 4956, before amendment, meant "publication in this or any foreign country" requires the word "published" in Sec. 4962, to be construed as meaning "published in this or any foreign country."

But appellant does not state what that reasoning is It is now seen that that reasoning and holding was based exclusively upon the proposition that the copyright statute had no extra-territorial operation but was intended as a system of local regulations applicable solely to publications within the limits of the United States, and designed solely to promote the publication of useful works within the United States. This reasoning, instead of supporting appellant's construction of the word "published" in Sec. 4962, is directly to the contrary, and requires that word to be construed in accordance with the contention of appellee, which is, that the notice must be inserted only "in the several copies of every edition published" *in the United States.*

As before stated, there are no American decisions wherein this question has been discussed, and no text writers who have expressed any opinion upon it. But the English statute has been construed and applied in accordance with the views above expressed.

In *Jeffreys* v. *Boosey,* L. R., 4 H. L., 815, it was held that the English Copyright Act was local in all its provisions and purposes, and did not confer copyright upon a non-resident alien, even though he made first publication of his work in England.

Mr. Justice Crompton said:

> "If it should be said why is the publication to be construed to mean a British publication, * * * the answer seems to me to be, that the publication being made the commencement of the term from which the monopoly is to run, and that publication giving rights confined to Britain and the enactments as to the entry at Stationer's Hall, before the rights as to the penalties were to attach, and the obligation imposed of delivering copies to British institutions, together with the authority *of Clementi* v. *Walker,*

(2 Barn. and Cr., 861), satisfactorily show that the publication must be intended to be in England." (P. 850.)

Mr. Baron Alderson said:

"I think that this law, by which it is given and regulated, must be considered as a *territorial law*, applying only to persons who are under the liegence of this country, unless there is something in the statute to give a more extensive operation to its provisions. This is to be shown by those who wish so to extend it; it is not sufficient for this purpose to show that there are expressions which may be so construed. They should go further, and show that they must be so, and this cannot be done. I think, therefore, that this which is in truth a profitable monopoly, which must be regulated as to its transmission, extent and duration, by the law of this country, which created and regulates it. * * * The learned counsel for the defendant in error, indeed, admitted very candidly that *the statute of Anne was not intended to have any extra-territorial effect.*" (Pp. 912, 913.)

Mr. Baron Parke said:

"It is clear that the legislature has no power over any persons except its own subjects, that is, persons natural-born subjects, or resident, or whilst they are within the limits of the Kingdom. The legislature can impose no duties except on them; and when legislating for the benefit of persons, must, *prima facie*, be considered to mean the benefit of those who owe obedience to our laws, and whose interests the legislature is under a correlative obligation to protect. *General words have been held to have such a limitation.* * * * Whatever construction ought to be put upon this statute in the time of Queen Anne

ought to be put now. We must read and understand it exactly in the sense we should have done then. The construction cannot vary from time to time according to the prevailing opinions as to the proper course of policy to be pursued in our intercourse with stangers." (Pp. 926, 927.)

Lord Chief Baron Pollock said:

"The statutes of this realm have no power, are of no force, beyond the dominions of Her Majesty, *not even to bind the subjects of the realm, unless they are expressly mentioned*, and I apprehend that it becomes therefore *a rule, in construing a statute, not to extend its provisions beyond the realm, whether to create a disability or to create a privilege.*" (P. 939.)

Lord Chief Justice Jervis said:

"We must endeavor, if possible, to arrive at the intention of the legislators who passed the statute in the reign of Queen Anne. Statutes must be understood in general to apply to those only who owe obedience to the laws, and whose interests it is the duty of the legislature to protect. * * * But no duty can be imposed upon aliens resident abroad, and with them the legislature of this country has no concern, either to protect their interests or to control their rights." (P. 946.)

The Lord Chancellor said:

"My opinion is founded on the general doctrine that a British statute must *prima facie* be understood to legislate for British subjects only, and that there are no special circumstances in the statute of Anne, relating to authors, leading to the notion that a more extended range was meant to be given to its enactments." (P. 958.)

Lord Brougham said:

> "Generally, we must assume that the legislature confines its enactments to its own subjects, over whom it has authority, and to whom it owes a duty in return for their obedience. Nothing is more clear than that it may also extend its provisions to foreigners in certain cases, and may, without express words, make it appear that such is the intendment of those provisions. But the presumption is rather against the extension, and the proof of it is rather upon those who would maintain such to be the meaning of the enactments. (P. 970.)

Lord St. Leonards said:

> "I think we may fairly consider that it ought not to be denied, that speaking generally, an act of our own Parliament, having a municipal operation, cannot be held to extend *prima facie*, beyond our own subjects. * * * It is quite clear, as an abstract proposition, that an act of Parliament of this country, having within its view a municipal operation, having as in this particular case, *a territorial operation, and being therefore limited to the kingdom*, cannot be considered to provide for foreigners, except as both statute and common law, do provide for foreigners when they become resident here, * * *." (P. 980.)

It has been expressly held that the English Imperial Copyright Act does not extend to the English colonies, *because not expressly so stated*, though the power to legislate for the colonies was admitted.

In *Graves* v. *Gorrie* (Privy Council), 2 Canada Commercial Law Reps., 186, 207. Lord Lindley said (208):

> "The Act of 1862 confers upon British subjects and persons resident in British dominions copyright

in pictures, drawings and photographs. Such copyright extends to the whole of the United Kingdom. But there is not a word in the Act to indicate any intention on the part of the legislature to extend the limits within which the copyright is to be enjoyed to any part of the British dominions outside of the United Kingdom. There are clauses, especially section 4, relating to registration, and section 10, prohibiting importation, which negative any such intentions. In the absence of language clearly showing an intention to confer copyright in such dominions their Lordships are of opinion that the plaintiffs' contention cannot be supported."

In the Divisional Court, Street, *J.*, said (2 Can. Com. L. R., 194):

"In considering the statutes to which we have been referred in the course of the learned and careful arguments addressed to us, it is necessary to bear in mind the well known principles referred to in the judgment of my brother Rose, namely, that statutes passed by the Imperial Parliament are to be treated *prima facie* as intended to apply to the United Kingdom only, and that in order that they may be held to apply to the colonies as well, there must be upon their face express language showing an intention that they should be so applied."

* * * * *

"I have found myself unable to discover on the face of this act anything which would justify us in holding that it was intended to apply to the colonies. On the contrary, I think, the internal evidence leads to the contrary conclusion."

* * * * *

"At all events, *no express intention can be found upon the face of the act that it should extend to the*

colonies, and that is all that is necessary to oblige us to hold that it does not."

And Rose, *J.*, in the Court of First Instance, said (186):

"As said by Lord Cranworth, in *Routledge* v. *Low* (1868), L. R., 3 H. L., at p. 113, 'The British Parliament in the time of Queen Anne must be taken *prima facie* to have legislated only for Great Britain just as the present Parliament must be taken to legislate only for the United Kingdom.' And in *Penley* v. *Beacon Assurance Co.* (1864), 10 Gr., at p. 428, Vankoughnet, C., said: 'While I admit the power of the Imperial Legislature to apply by express words their enactments to this country, I will never admit that without express words they do apply or are intended to so apply.'

"It is necessary, therefore, carefully to examine the language and effect of the statute to see whether either by express words, or at least by necessary implication, it extended to the Dominions of the Crown."

In *Routledge* v. *Low*, 18 L. T. (N. S.), 874, L. R., 3 H. L. 100, the Lord Chancellor said (875):

"As to the question, where must publication take place, I cannot doubt that the publication must be in the United Kingdom. The words in the 3rd section are: 'Every book which shall be published,' without saying where; but it would be very inconsistent with the usual practice of the Imperial Parliament to create a system of copyright law for all the colonies and dependencies in the Empire, many of which have representative institutions of their own, without any consultation with those colonies or dependencies, and without any consideration whether an uniform and arbitrary system such as that introduced by this act,

would be suitable to the varied circumstances, states of naturalization, and systems of jurisprudence and judicature, in these different colonies and possessions."

The English Patent Act has likewise been held not to have any extra-territorial operation. In accordance with this principal it has been held that a sale by a person in England to a purchaser, also resident in England, of an article made abroad in accordance with an invention protected by a British patent, and to be delivered abroad is not an infringement of the British patent.

Badische Anilin and Soda Fabric *v.* Hickson, 23 Rep. Pat. Cas., 433, 22 Rep. Pat. Cas., 575;
Badische, Etc. Co. *v.* Johnson, 14 Rep. Pat. Cas., 919, 14 Rep. Pat. Cas., 405;
Saccharin Corporation *v.* Reitmeyer, 17 Rep. Pat. Cas., 606.

(7.) *Appellant's brief and argument is founded upon a misstatement of appellee's contention, and of the decision below.*

A large part of appellant's brief is devoted to a refutation of a construction of Section 4962, which is not advanced by appellee, and which was not given to the statute by the court below. Appellant assumes that appellee's contention is that Section 4962, does not require a notice of copyright upon any *foreign made* copyrighted article, and its argument is confined to a refutation of that proposition. Such is not the construction contended for by appellee, nor given by the court below. *Appellee does not contend that foreign made articles are exempt from the requirement of notice.* It does contend, however, that no notice is required until the foreign made article is brought into this country, by or with the consent of the American proprietor. It is admitted that when the American proprietor brings into this country

his foreign made copyrighted article, he must put the notice upon it, but until such articles are thus brought in there is no requirement of any notice upon them. There is a vast difference between this proposition, and the proposition which appellant attacks in its brief. This disposes of the second, third, fourth, fifth, and twelfth points, as stated in the "brief of argument" contained in appellant's brief. (Appellant's brief, pages 5, 6, and 8.) Appellant argues, under these points, that for various reasons the proprietor of an American copyright might desire to confine his manufacture to a foreign country, supplying the American market by importation of the foreign made copyrighted articles, and that therefore such foreign made articles must bear the prescribed form of notice. A sufficient answer to this argument is that if the proprietor could and did import his foreign made books or other articles into this country, such imported articles must, of course, bear the required notice, because such importation would constitute a *publication within the United States.* But that has no bearing upon the question whether the books, or other articles published and circulated abroad, and not imported by the proprietor, must bear the notice, which is the question at issue. A further answer to this contention is that as to the four articles named in Section 4956, *i. e.* books, chromos, lithographs and photographs, the proprietor is specifically forbidden to import such articles for the purpose of supplying the American market. The question of importation is fully considered hereafter. (See *post*, p. 83.) Appellant argues: "Even if the copyright notice be meaningless and useless so long as the book or article remains abroad, the very moment that publication occurs here, the copyright notice serves its function." (Appellant's brief, p. 20.) True. But until such publication occurs here, by or with the consent of the proprietor, the notice need not be inserted in the foreign book. Of course, the proprie-

tor is not responsible for the absence of a notice in a piratically imported copy.

Appellant further argues under this head:

> "If, therefore, the provisions of Section 4962, of the Copyright Act are to be held to apply to copyrighted books or other articles *published or manufactured in this country only*, then manifestly the law exacts from our own citizens a requirement to which aliens are not subject. Is it conceivable that it was the purpose of Congress to thus impose upon the American citizen, publishing or manufacturing in this country, an obligation from which the alien was exempt?" (Appellant's brief, p. 16.)

Appellant further says:

> "If there had been any purpose to so discriminate in favor of the foreign publisher as to relieve him from the obligation of inserting in his books the statutory copyright notice, certainly the law would not have been silent upon this point." (Appellant's brief, pp. 16, 17.)

There was no purpose to discriminate between citizens and aliens. Both are put upon precisely the same basis. Both must insert the statutory notice in their book when that book is published or circulated, with their consent, in the United States. Until that time, and in purely foreign books, not imported by their consent into the United States, neither need insert such notice. The fallacy in appellant's argument upon this point lies in the assumption that the court below held that Section 4962, did not apply to copyrighted books or other articles *published or manufactured* abroad. That court did not so hold, and appellee does not so contend. Appellee does contend, however, that the statute does not discriminate against the American proprietor, and require him to do abroad,

what it does not, and cannot, require anyone else in the world to do. Under the copyright law, citizens and foreigners are upon a precise equality both here and abroad. It is appellant's, and not appellee's contention which works a discrimination.

Appellant makes the following two points in his brief:

> "XIII. The requirements of a public statute cannot be evaded by a private agreement, and hence the contract between appellee and George Bell & Sons cannot relieve appellee from the obligation of complying with the provision of the statute as to the printing of the copyright notice in the several copies of every edition of its book published.
>
> "XIV. The agreement between appellee and George Bell & Sons as to the importation of the English edition into this country was one with which the public had no concern and which might at any time have been modified by the parties to it. The authorities are conclusive in showing that the public cannot be affected by such agreement." (Appellant's brief, p. 8.)

Both of these propositions are true, and both are totally irrelevant. Appellee does not claim that its contract with the English publisher relieved it from the obligation of complying with the statute. On the contrary, its claim is that it has literally and exactly complied with all the requirements of the statute. The contract is important, however, as showing conclusively that appellee did not consent to the importation or publication of the English book in this country. In the absence of such consent, appellee cannot be affected by what others may do over whom it can exercise no control. If appellee should modify the contract, and consent to importation, a different question would arise.

Construction of Statute.

Appellant also makes the following point:

> "XVII. The fact that appellee did not intend that the edition of his book should be imported into, or sold in this country is of no moment, as the plain provisions of a statute cannot be evaded by any design or intention that may exist in the mind of the owner of the copyright with respect of the use to be made of his book." (Appellant's brief, p. 9.)

Appellant develops this point on pages 49-52 of its brief. No one ever thought of contending to the contrary. This point seems mainly directed at the statement in the opinion of the Circuit Court of Appeals to the effect that the notice is not required in foreign editions "not designed for sale in the United States." This point was presented to the court below in support of a motion for a re-argument, which was denied. Appellant argues from this statement that the decision of the Circuit Court of Appeals makes the validity of the American copyright depend upon the undisclosed mental attitude of the publisher. This is hypercritical, and the opinion of the court below will bear no such absurd construction. When that court said that the notice was not required in foreign editions, "not designed for sale in the United States," it was clearly referring to books published and sold abroad, but not imported or sold in the United States by or with the consent of the proprietor of the copyright. It had no reference to an undisclosed mental attitude of the publisher. It was referring to an intent as evidenced by the acts of the parties.

The last error of law assigned by appellant is that the Circuit Court of Appeals stated in its opinion that if appellee had placed the statutory notice in the English book it would have been a false notice and a violation of Section 4963. (Appellant's brief, Point XVIII, p. 9.

also pp. 52, 53.) This is a moot question for appellant did not place the notice in the English book and is not being tried for a violation of Section 4963. Whether the court below was right or wrong in this statement is wholly immaterial. When the court made this statement in its opinion, it had already decided the case upon other considerations, and this was but an additional argument brought forward by the court to reinforce its conclusion as to the proper construction of Section 4962, which is the only question in issue.

(c) Liberal Construction to Support Copyright.

It is well settled that Section 4962 of the copyright statute, providing for a notice of copyright, must be liberally construed "with a view to protect the just rights of authors, and to encourage literature."

> Ford *v.* Charles Blaney Amusement Co., 148 Fed., 642.

"The object of the copyright law is beneficent. It was intended, in the language of the Constitution, 'to promote the progress of science and useful arts,' and in my opinion the copyright laws should be liberally construed to carry out the intention of the Constitution."

> Werckmeister *v.* American Lith. Co., 142 Fed., 827, per Holt, *J.*

"This law should be liberally construed in favor of authors. * * * The fruits of their literary toils should be secured to them by the highest title, for they keep open the springs of thought which feed the intellectual life of the nation."

> Boucicault *v.* Fox, 5 Blatchf., 87, 3 Fed. Cas., 1691 per Shipman, *J.*

Construction of Statute.

This court itself has said that it has "the utmost desire to give a construction to the statute most liberal to the author."

Mifflin *v.* **White, 190 U. S., 260.**

"The object of all copyright laws is to protect and regulate property in the product of the brain, not to annihilate it."

Crow *v.* **Aiken, 2 Biss., U. S., 208, 6 Fed. Cas., No. 3441.**

(d.) Decisions Touching Precise Question Presented.

There is but little direct authority upon the precise question presented for decision in this case. The question has been several times involved in reported cases, but prior to the decision of this case below, there has been no judicial discussion of the question, and it comes now before this court practically as a case of first impression.

In the case of *Dwight* v. *Appleton*, 8 Fed. Cas., No. 4215, the defendant contended that plaintiff had lost and abandoned his copyright *"by publishing and selling for profit an unprotected edition in England."* This objection was overruled, and the copyright supported by Mr. Justice Thompson, of this court, sitting at circuit, who said:

> **"In this case, full notice had been given to the public of the plaintiff's claim of a copyright of this work, and in the opinion of the court, the law had been substantially complied with, and that the title to the copyright in the work had become well vested in the plaintiffs.**

In *Haggard* v. *Waverly Pub. Co.*, 144 Fed., 490, a demurrer to a bill for infringement of copyright of a book upon the ground that the bill failed to allege that the

copyright notice, required by Rev. Stat. Sec. 4962, had been printed in all editions of the book published in foreign countries, was overruled. Judge Acheson said:

> "The third specified ground of demurrer is mainly relied on. Whether the averments with respect to compliance with Section 4962, Rev. Stat. U. S., are full enough, is a close question; but I incline to the opinion that the facts alleged in the bill show a *prima facie* right to relief, and I resolve the doubt against the demurrant."

The case of *Harper* v. *Donahue and Ogilvie*, 144 Fed., 491, was decided a few days after the decision of the Circuit Court in this case. The same George W. Ogilvie, who figures here, was a defendant in that case. The decision of the Circuit Court in the present case was relied upon in part as a defense. Judge Sanborn, while apparently approving the decision of the Circuit Court in this case, distinguished it and granted an injunction. That this approval of the Circuit Court's decision, without much, if any, examination of the question, was a mere dictum and not necessary to a decision of the case, is conclusively shown by the fact that in its opinion as finally reported, the court calls attention to the reversal of this case by the Circuit Court of Appeals, but does not otherwise change its opinion, and also by the fact that an injunction was granted in spite of, and not because of, the decision of the Circuit Court in this case.

In the Harper case, Katherine Cecil Thurston was the author of a novel. Before publication she assigned all American rights to Harper Brothers and all English rights to Blackwood Sons. The novel was published in this country under the title of The Masquerader, and in England under the title of John Chilcote, M. P. The English edition bore no notice of copyright. Ogilvie and Donohue imported a copy of the English edition, just as

was done in the present case, and proceeded to print and publish it until stopped by the injunction. The court held that the importation in that case was an infringement of the copyright. There is no legal distinction between that case and this. The only difference in the facts is the following: (1) In the Harper case, the English and American copyrights were owned by different persons. In this case, the appellee owns both copyrights. But this makes no legal difference. Each copyright is a distinct right, limited to its own country and has no effect upon the rights, duties or privileges of its owner in the other country. In the Harper case, the American proprietor took its rights subject to an express reservation by the author of the right to publish in England, and in legal effect consented to such English publication. The situation cannot be distinguished from that of the case at bar. (2) In the Harper case, the English books were not printed from type set here, and their importation was held to be illegal. But the importation in the present case was also illegal, as is shown hereafter. (See *post*, pp. 83; 120.) It appears, therefore, that this Harper case, instead of being an authority, against appellee, is really in appellee's favor. There was no discussion in the Harper case as to whether a notice is required to be inserted in foreign books before importation takes place.

The case of *Pierce & Bushnell Co.* v. *Werckmeister*, 72 Fed., 54 (*reversing* 63 Fed., 445), is much relied upon by appellant in its brief (Appellant's brief 35-37). In this case a picture, painted by a German artist, was exhibited in a gallery at Berlin from January until March, 1892. On May 16, 1892, the picture was attempted to be copyrighted in this country by deposit of the title, a description and a photograph, in the office of the librarian of Congress. The original painting, exhibited in Berlin, never had any copyright notice upon it, or upon any part of the substance upon which it was mounted. In a suit for infringement, it was contended that the exhibition of

the painting in the gallery at Berlin, was a publication of the painting, without the required notice. The questions discussed at the circuit and on appeal, were (1) whether such exhibition of the picture was, under all the circumstances, a publication of it; and (2) whether the statute (Section 4962) required, in the case of a painting, the insertion of the notice upon the original painting or only upon published copies thereof. The circuit court upheld the copyright, holding that the exhibition of the painting was not a publication, and that the statute did not require insertion of the notice upon the original copyrighted painting, but only upon published copies thereof. (63 Fed., 445.) Upon appeal the Circuit Court of Appeals for the First Circuit, reversed this decision, and held (1) that the exhibition of the painting in the gallery was a publication, and (2) that the statute (4962) required the notice to be inserted upon the original copyrighted painting, as well as upon the copies thereof. It should be noted that if this exhibition of the painting in the gallery at Berlin, was a "*publication*" thereof, then the American copyright was void and the reversal was correct, because the painting was not entered for copyright "before publication in this or any foreign country" as required by Section 4956. Yet this obvious and vital objection to the copyright does not appear to have occurred to the mind of either court or counsel in that case. This vital objection would have been decisive of the case without regard to any question of the insertion or omission of the copyright notice. The question as to whether or not the statute requires the notice to be inserted in purely foreign publications, seems also to have been wholly overlooked by both court and counsel, because there is not the slightest reference to this question in the opinion. Admitting that the exhibition was a publication it would have been a complete answer to the defense of the omission of the notice to call attention to the fact that the statute does not require insertion of the

notice in purely foreign publications. The court was fully justified in deciding the case upon the points presented and argued by counsel. But the question now raised not having been presented, discussed, or even referred to, this decision cannot be considered an authority of any weight, as opposed to the deliberate decision of this question by the Circuit Court of Appeals in the case at bar.

Precisely the same questions thus raised in the First Circuit, were subsequently raised in a line of cases in the Second Circuit, reported as follows:

> Werckmeister *v.* American Lith. Co. (C. C. A.), 134 Fed., 321;
>
> Werckmeister *v.* American Lith. Co., 142 Fed., 827;
>
> American Tobacco Co. *v.* Werckmeister (C. C. A.), 146 Fed., 375.

In all these cases in the Second Circuit, the copyright was supported upon the double ground that (1) the exhibition of the painting in a gallery, where copying was not permitted, did not constitute a "publication," and (2) that the statute (Section 4962) does not require the insertion of a notice upon the original copyrighted painting, but only upon published copies thereof. This statement of the law has been affirmed by this court in the very recent case of *Werckmeister* v. *American Tobacco Co.*, decided at this term and not yet reported (See opinion of Dec. 2, 1907.)

Neither in the case in this court, nor in any of the cases referred to in the Second Circuit, was the question as to the requirement of a notice in purely foreign publications considered or discussed. The opinions are absolutely silent upon that question. If the exhibition of the painting, as shown in these cases, did not constitute a "publication," then the insertion of a notice thereon was un-

necessary in any view of the law. The court held in these cases, that such exhibition was not a publication, and therefore it became unnecessary to determine whether a notice would have been necessary if the exhibition had been a "publication." These decisions are, therefore, no authority whatever upon the question now at issue before this court as to the true construction and operation of the statute (Sec. 4962) in regard to notice. This court, in the opinion above referred to, expressly recognizes that this section of the statute is not clearly expressed, nor technically accurate, and that in construing it the court is not "confined to a literal reading, and may consider its object and purpose, the things with which it is dealing, and the condition of affairs which led to its enactment so as to effectuate rather than destroy the spirit and force of the law which the legislature intended to enact." This is the precise doctrine for which appellee contends.

The case of *Boucicault* v. *Wood*, 3 Fed. Cas. No. 1693, is cited by appellant in its brief (p. 17) to the point that first publication, even if made abroad, is a bar to a subsequent copyright in this country. That proposition is correct for reasons already shown in this brief. (*Ante*, p. 60.) The case has no bearing whatever upon the question now before the court.

There are no reported cases, other than the above, in which the question now before the court has been in any way presented or involved.

II.

THE IMPORTATION INTO THE UNITED STATES OF COPYRIGHTED MATTER WITHOUT THE CONSENT OF THE AMERICAN PROPRIETOR IS AND ALWAYS HAS BEEN PROHIBITED BY THE COPYRIGHT LAWS.

If importation of copyright books is prohibited and unlawful without the consent of the proprietor, it tends

to show that Section 4962 does not require notice of copyright to be inserted in foreign editions, because to do so would be a vain and useless act, without object and without benefit to anybody.

If the particular importation made for appellant in this case was unlawful, it clearly did not amount to a publication in this country by appellee, and appellee's rights were not affected by either the importation or the use made of the unlawfully imported copies.

The decision at the circuit was made to turn upon the question of the lawfulness of the importation. It is proper, therefore, to consider the question of importation, although a decision of the first point as to the proper construction of the requirements of Section 4962 in respect to notice is in fact, decisive of this case.

(a) *The Opinions Below and the Statute.*

The Circuit Court based its decision upon the following statement as to the law in regard to the importation of copyrighted books:—

> "The copyright act prohibits the importation of a book not made from plates from type set in the United States, during the life of the copyright, but contains no prohibition as to a book made from type set in this country, as was the case here. In the latter case there is no restriction placed upon importation, except that imposed by the revenue act, which it is not necessary here to consider." (Rec., 42.)

The section of the statute referred to by the court in the above quotation is evidently Rev. Stat., Sec., 4956, as amended by the Act of March 3, 1891. That section so far as it relates to importation is as follows:

> "Provided, That in the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above,

shall be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives; or drawings on stone made within the limits of the United States, or from transfers made therefrom. During the existence of such copyright the importation into the United States of any book, chromo, lithograph, or photograph, so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives, or drawings on stone made within the limits of the United States, shall be, and is hereby prohibited, except in the cases specified in paragraphs 512 to 516, inclusive, in section two of the act entitled, an act to reduce the revenue and equalize the duties on imports and for other purposes, approved October 1, 1890; and except in the case of persons purchasing for use and not for sale, who import subject to the duty thereon, not more than two copies of such book at any one time; and, except in the case of newspapers and magazines, not containing in whole or in part matter copyrighted under the provisions of this act, unauthorized by the author, which are hereby exempted from prohibition of importation.

Provided, nevertheless, That in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translation of the same, and the importation of the books in the original language shall be permitted.

The Circuit Court of Appeals did not directly decide whether the importation made under the circumstances of this case was legal or illegal, declaring, with manifest correctness, that the absence of a specific prohibition in the statute against such importation was immaterial. The court was plainly of the opinion, however, that the

importation of appellee's English book was unlawful, and an infringement of appellee's American copyright though it placed its decision upon the broad ground that Section 4962 did not require the insertion of the notice in foreign editions. Upon the question of importation the Circuit Court of Appeals said, in an opinion by Wright, *J.*:

> "Appellant's copyright of Webster's High School Dictionary was in strict conformity to law, and is unassailable in the United States unless the publication in Great Britain omitting notice of copyright as required by Section 4962 Revised Statutes, deprives it of the right to maintain an action for infringement.
>
> "Appellee imported two copies of the British publication of the book for its use; that is, to reprint and republish it in this country for sale. The importation and publication is sought to be justified by appellee because the publication in England was printed from type set or plates made within the limits of the United States, and more particularly appellee's insistence is that the publication is justified because of the failure of appellant to insert in the books published in England the copyright notice required by the United States copyright law.
>
> "In support of these contentions it is argued that the only prohibition contained in the law is against the importation of books not made from plates from type set in the United States during the life of the copyright, and that the books in question having been made from plates from type set in the United States, there exists no law against the importation of them, and having been lawfully imported, and being thus properly in the United States and containing no notice therein of the United States copyright they were legally subject to be reproduced by re-

print or publication by any person, not withstanding the copyright of the United States edition of the book.

"The prohibition against importation found in section 4956, Revised Statutes, we think was not intended to do more than its plain terms import, considered with the context of the whole section. Manifestly the object of that prohibition is to prevent from being done abroad, the work of producing copyright books designed for sale in the United States. The prohibition of that section has no application to the facts in this case. The publication of the book in Great Britain was not intended for sale in the United States. Appellant had already provided another edition of the book for sale in the United States by obtaining copyright according to law, and which was duly protected thereby. However, in the ultimate view we entertain of the question involved, we do not consider the absence of a specific prohibition in the statute against the importation of a book in the situation of appellant's English publication, as of controlling effect. The vital question is, whether protection can be afforded against infringement of the copyright appellant obtained from the United States, or whether the facts stated constitute an infringement.

"If the importations of the British book were in large numbers designed for sale in the United States in competition with the domestic copyright, than the question would be not only of illegal importation but of infringement of the domestic copyright, as well, as the same now is of infringement by reproducing in this country the foreign publication." (146 Fed., 356, 357.)

Without, in any way, conceding that the quotation

from the opinion of the Circuit Court correctly construes Section 4956, it still is not true, as stated by the circuit judge, that the Copyright Act "contains no prohibition as to a book made from type set in this country"; nor is it true that in such case "there is no restriction placed upon importation, except that imposed by the revenue act." On the contrary, Section 4964, as amended by Act of March 3, 1891, makes it penal to import a copyrighted book without the written and witnessed consent of the proprietor. This section is in full as follows:

> "Section 4964. Every person who, after the recording of the title of any book and the depositing of two copies of such book as provided by this act, shall, contrary to the provisions of this act, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, dramatize, translate, or *import*, or, knowing the same to be so printed, published, dramatized, translated or *imported*, shall sell or expose to sale any copy of such book, *shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered* in a civil action by such proprietor in any court of competent jurisdiction."

Rev. Stat., Sec. 3061, authorizes the seizure of all articles "introduced into the United States in any manner contrary to law."

(b) Sections 4964 and 4965 are Penal Statutes.

It is well settled that section 4964 is penal, as is also the following section (4965), which is *in pari materia*, but relates to other copyrighted articles.

McDonald *v.* Hearst, 95 Fed., 656.

Prohibition of Importation.

Schreiber *v.* Sharpless, 6 Fed., 175, 179, s. c. on appeal, 110 U. S., 76.
Taylor *v.* Gilman, 24 Fed., 634.
Wheeler *v.* Cobby, 70 Fed., 487.

(c) What is Made Penal is Prohibited.

It is unnecessary to argue that what is made penal is prohibited, for what is implied in a statute is just as much a part of it as if expressed.

Opinion of Atty. Gen. Knox, 23 Op. Atty. Gen., 445, construing Rev. Stat., Sections 4956, 4964, 4965, as amended by Act March 3, 1905.

The prohibition in Section 4964 of the importation of a copyrighted book without the consent of the proprietor is absolute. It does not in any way depend upon the place where the type is set or the plates made. Neither does it depend upon whether the imported book was a duly authorized foreign edition. It follows that *the circuit court was plainly in error* when it stated as the *foundation of its decision* that, under the copyright law, "there is no restriction placed upon importation except that imposed by the revenue act," in the case of books printed from plates made from type set in this country.

(d) Importation of Copyright Books Prior to Act of Mar. 3, 1891.

The prohibition of importation contained in Section 4956, which first came into the law by the amendatory act of March 3, 1891, was aimed primarily at authorized importations by the proprietor and was designed to enforce the new requirement of domestic manufacture which came into the law at the same time. This amendment was wholly unnecessary to prohibit unauthorized or piratical importations, because these were already prohibited by the penal clauses in Sections 4964 and 4965, and had been so prohibited from the very beginning. A brief

statement as to the law concerning importation of copyrighted books as it was prior to the Act of March 3, 1891, will make this clear, and at the same time demonstrate the fundamental error of the Circuit Court.

The question of importation under the copyright laws must be concerned with either the authorized importation by the proprietor or those claiming under him, or unauthorized importations in disregard of the proprietor's consent.

So far as *copyright protection* is concerned, it is obviously unnecessary to prohibit *the proprietor* of the copyright from importing copies of his own work. Accordingly, prior to the Act of March 3, 1891, there never was a provision in the copyright law of the United States which in any way limited the right of the proprietor to manufacture wherever he pleased and to import copies into this country.

Prohibition of *unrestrained unauthorized importations* is, however, absolutely essential to copyright protection. Copyright is essentially an *exclusive* right. It is so denominated in all the copyright statutes and all the decisions on the subject. If unlimited importation by unauthorized persons is permitted, the law takes away with one hand what it gives with the other. Copyright would then be merely a right to compete with an indefinite number of producers, instead of an exclusive territorial right as intended by the statute. But *the law has always made unauthorized importations illegal* and subject to severe penalties. Indeed this would be implied from the grant of exclusive right to copy, publish and sell. But it has never been left to implication. Every copyright act has made it penal to import without consent of the proprietor of the copyright. This penal section has remained without substantial change from the very first United States copyright act down to the present time. There has never been any other express prohibition in the statute, until the Act of 1891.

Prohibition of Importation.

Act of May 31, 1790, Sec. 2; 1 St. at Large, p. 124. (Original Copyright Act.)
Act of April 29, 1802, Sec. 3; 2 Stat. at Large, pp. 171, 172.
Act of Feb. 3, 1831, Sec. 6; 4 Stat. at Large, pp. 436-439.
Act of July 8, 1870, Sec. 99; 16 Stat. at Large, pp. 212-217.
Rev. Stat. U. S., 1873, Sec. 4964.
Act of March 3, 1891, Sec. 7. (Amending Rev. Stat., Sec. 4964.) 26 Stat. at Large, pp. 1106-1110.
Bulletin No. 3 of the Copyright Office, containing all of the above statutes.

There seems to be no direct decision of any court holding that unauthorized importations of copyrighted articles are illegal under this penal provision of the statute. But the Treasury Department has uniformly so held, and has acted upon that contruction. Mr. Justice Lamar, speaking for the Supreme Court, has said:—

> "The principle that the contemporaneous construction of a statute by the executive officers of the government, whose duty it is to execute it, is entitled to great respect, and *should ordinarily control the construction of the statute by the courts*, is so firmly imbedded in our jurisprudence that no authorities need be cited to support it."
>
> Pennoyer *v.* McConnaughy, 140 U. S., 1, 23.

See, also,

Brown *v.* U. S., 113 U. S., 568.
The Laura, 114 U. S., 411.

We quote in full the following three treasury decisions to show the "contemporaneous construction by the

executive officers of the government" of the law as it stood prior to the act of March 3, 1891. Others to the same effect might be quoted:

TREASURY DECISION No. 5342.

"Detention of Books Protected by Copyright.

Treasury Department August, 11, 1882.

Sir: This department is in receipt of your letter dated the 21st ultimo, relating further to the request of Messrs. Houghton, Mifflin & Co., publishers, that an order be issued forbidding the importation of English reprints of "Uncle Tom's Cabin," which work is copyrighted in this country. *By section 4964 of the Revised Statutes the importation of any copyright book published in this country without the consent of the proprietor of the copyright is illegal, and subjects such importation to forfeiture to the proprietor. Sections 3061 to 3072 authorize the officers of customs to seize any merchandise unlawfully introduced into the United States* and secure the same for trial.

While it does not appear to be the duty of customs officers to proceed for the forfeiture of the books, the collector is authorized to detain them without entry where he has good reason to believe that they are unlawfully imported, and the importer fails to show the consent of the proprietor of the copyright in writing, as provided in section 4964, Revised Statutes.

You will take action accordingly.

Very respectfully,

H. F. FRENCH,
Acting Secretary.

Collector of Customs, Boston, Mass.

Prohibition of Importation.

TREASURY DECISION, No. 5416.

"Importation of Books Copyrighted in the United States Treasury Department, October 19, 1882.

Collectors and other officers of the customs are hereby notified that, by section 4964, Revised Statutes, the importation of books copyrighted in the United States without the consent of the owners of the copyright is prohibited.

To avail themselves of the protection given by the law, owners of United States copyrights must file with collectors of customs duly authenticated certificates of such ownership. On importation of any book, whether by mail or otherwise, which are covered by any such certificate, and the importation of which is not consented to by the owner of the copyright, the proper officer of the customs will detain the books, and at once notify the owner of the copyright, to the end that the latter may take the steps necessary for their forfeiture to him.

Books covered by such certificate will not be admitted to an entry on behalf of the importer, but it will be the duty of the collector to request the district attorney to intervene for the duties in any proceeding which may be instituted for their forfeiture.

H. F. FRENCH,
Assistant Secretary."

(Note:—The authenticated certificates called for in the above regulation of the treasury department have been replaced by the list of Title Entries, as provided in Section 4958 as amended by act of March 3, 1891.)

TREASURY DECISION, No. 10269.

"Copyright laws covers books in languages other than the English.

Treasury Department, October 8, 1890.

Gentlemen: The department is in receipt of your letter of the 18th ultimo, in which you request the delivery of four parts of Stanley's "In Darkest Africa," published in the Norwegian language, which were sent to you by mail by the owner of the copyright for Norway and Denmark, and which are held by the customs bureau at the New York postoffice for violation of the copyright law.

In reply, I have to inform you that the fact that the book is published in a language other than English does not affect the rights of the owners of the United States copyright, and that the parts can be delivered to you only with the consent of the owners of such copyright, Messrs. Charles Scribner's Sons, New York City.

On presentation of the written consent of said firm to the collector of customs at New York, the parts will be forwarded to you.

* * * * * *

Respectfully yours,

O. L. SPAULDING,

(5350f.) *Assistant Secretary.*

Hanges Printing and Publishing Society, Red Wing, Minn.

From the foregoing brief statement, it seems clear that from the date of the first Copyright Act, in the year 1790, down to the passage of the act of 1891, nobody but the owner of the copyright could lawfully import into the United States a copyrighted book without first obtaining the written, signed and witnessed consent of such owner of the copyright.

(e) The Act of March 3, 1891.

The amendments of 1891, are commonly referred to as

the "International Copyright Law." But the name tends to confusion. A true "international" copyright cannot be obtained under its provisions. One cannot obtain a joint grant of a copyright which is valid in two or more different nations. He can, however, obtain separate copyrights in the different countries by complying with the local laws and regulations in each. But his rights under each copyright depend upon the laws of the country granting it, and are limited to the territory of such country. The copyright in one country may be forfeited or sold, and the other retained. In copyright matters, each country still maintains a "ring fence" around its territory.

In extending to foreigners the privilege of copyright in this country, Congress did so by simply removing the disability which had previously existed, dropping out the restricting words in Section 4952, which theretofore limited copyright to "any citizen of the United States or resident therein." Foreigners whose laws grant reciprocal rights and citizens are placed upon the same basis. But American labor, represented though the labor unions, insisted that if foreigners were to have a copyright in this country, their works must be manufactured in this country. This is the source and explanation of the American manufacture and importation clauses in Section 4956. As both foreigners and citizens were placed on the same basis, these clauses referred to both. As originally passed by the House, Section 4956, contained an absolute prohibition on the importation by anybody of the copyright articles. The Senate, however, would not agree to this, and the result was a compromise by which the exceptions from the prohibition were inserted in Section 4956. Having reached this compromise, it was pointed out that Section 4964, which still remained unchanged, was an absolute prohibition on importation, and hence inconsistent with the exceptions contained in Sec-

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tion 4956. To remedy this, Senator Platt, of Connecticut, who was the father of the bill, consented to the insertion of the words "contrary to the provisions of this Act." *These words in Section 4964 refer to the exception clauses in Section 4956.* (See remarks of Senator Carlisle, and Senator Platt, Cong. Rec., Feb. 19, 1891, pp. 3074, 3075.)

Congress clearly did not intend by the Act of 1891 to cut down the measure of copyright protection theretofore offered. On the contrary, it is common knowledge that the intent of Congress by this act, commonly known as the "International Copyright Law," was to extend copyright protection. The purpose of this act is well stated by Attorney-General Griggs in an opinion rendered to the treasury department January 19, 1901, upon a question of importation arising under the act. The attorney-general said:

> "I think there can be no doubt that the main purpose of the recent amendments to the copyright laws was to extend to foreign authors and artists, upon assurance of reciprocal privileges being granted to us by foreign countries, the copyright protection which had previously been restricted to citizens and residents of the United States. The history of the legislation and of the long agitation on the subject conclusively shows this. (*Littleton* v. *Ditson,* 62 Fed. Rep., 697; Putnam on the Question of Copyright, 2d Ed., p. 33, citing report of Henry Clay in 1837; pp. 40, 47, citing report of house committee on patents in 1890; p. 148, quoting from speeches in the senate debate of 1891, *et passim.*) A conjoint purpose was the protection of American labor, especially in the printing trade. (Putnam, *ut supra,* pp. 52, 78, etc.) The views of statesmen regarding a measure of legislation may properly be considered, and while their statements are not admissible to

control the meaning of words in a law, nevertheless such statements are 'valuable as contemporaneous opinions of jurists and statesmen upon the legal meaning of the words themselves.' (*Wong Kim Ark* v. *United States*, 169 U. S., 649, 699; and see *Am. Net & Twine Co.* v. *Worthington*, 141 U. S., 468, 473-4.)

"It is a cardinal rule in construing a law that the evil or defect to be remedied should be borne in mind, and that to effectuate the intention, supposed repugnancies should be reconciled if possible, *ut res magis valeat quam pereat.*"

23 Op. Atty.-Gen., 353.

See, also,

Treas. Dec. No. 22, 751.

Solicitor General Conrad also points out, in an opinion on the question of importation rendered to the treasury department April 19, 1895 (21 Op. Atty.-Gen., 160), that the Act of 1891 is purely an amendatory statute, and that "*it does not repeal the then existing statutes on the subject, but that the amendments consist solely in the addition of new provisions.*" He also said: "Section 2 is an amendment of section 4956, Revised Statutes. It does not operate to repeal any provisions of section 4956 but amends it only 'by adding something new.'" Still less does the addition of "something new" to section 4956 repeal the prohibitions of section 4964.

"An amendment of a statute may or may not operate as an implied repeal of the original law. If it does not change the same, but merely adds something to it, it is not, in general, a repeal thereof."

Endlich, Interpretation of Statutes, Sec. 195, quoted with approval by Solicitor General Conrad, 21 Op. Atty.-Gen., 160.

Construction of Statute.

The "something new" added by the Act of 1891 to section 4956 was the requirement of *domestic manufacture* as a condition of copyright for the four articles named, books, photographs, chromos and lithographs, and the *prohibition of the importation* of said four articles, or of any foreign made plates, or any plates, negatives or stones thereof, with certain designated and limited exceptions.

The prohibition here is limited to the four articles required by the preceding portions of this section to be produced in the United States, and the act does not purport to repeal any existing prohibitions on importation. The situation, then, is that as to the four articles named there is a double prohibition, the one in section 4956 applying to the proprietor as well as all other persons, and the one in sections 4964 and 4965 applying to persons other than the proprietor who attempt to make piratical and unauthorized importations.

As before stated, the prohibition against importation in section 4956 was aimed at importation by the proprietor. One purpose of the act, which was the *protection of American labor,* might be in part defeated if the proprietor could manufacture his copyrighted books or other articles abroad and then import them for sale in this country. As there was nothing in the existing law to prevent this it was necessary to add a new prohibition to the act, and it was done in general terms. In other words, the prohibitions in section 4956 were inserted to make the new clause requiring American manufacture effective.

As the statutes now stand, importation of *unauthorized* copies is prohibited in order that the proprietor of the copyright may be protected (Sec. 4964), and importation of *authorized* copies, printed abroad, is prohibited in order that American labor may be protected. (Sec. 4956).

It seems obvious from the foregoing statement of the

purpose and intent of the amendments of 1891 that the insertion of a new prohibition clause in section 4956 did not have the effect to repeal the existing prohibitions, and make lawful the importation of copyrighted books without or against the consent of the proprietor of the copyright, even when such books were printed from plates made from type set in this country.

If it be held, as contended by appellant, that books printed from plates made from type set in this country are not prohibited importation by any and everyone who may choses to import them, in any quantity, and for any purpose, because not included in the terms of the prohibition in section 4956 as amended by the act of 1891, then *by parity of reasoning, there is no prohibition upon the unlimited importation of copyrighted maps, charts, dramatic or musical compositions, engravings, cuts, prints, paintings, drawings, statues or statuary, models or designs*, because none of these articles are included in the prohibition of section 4956. This conclusion *works a practical repeal of the copyright law.*

This precise question arose as to the importation of musical compositions. It had previously been determined that "musical compositions" are not "books" within the meaning of the copyright law.

> Littleton *v.* Oliver Ditson Co., 62 Fed., 597, affirmed, (C. C. A.), 67 Fed., 905.

The treasury department, in view of this decision, was in doubt as to whether the importation of copyrighted musical compositions was prohibited, because if they could not be deemed books, they were not within the prohibition of section 4956. The department referred the question to Attorney-General Knox for an official opinion. The attorney-eneral, in a lucid opinion, 23 Opinions Atty.-Gen., 445, 446, held that sections 4964 and 4965 *prohibited the unauthorized importation of all articles named*

therein, notwithstanding the failure to include them in the prohibition of Section 4956. He said:

"The principal question is whether the copyright act forbids the importation of copyrighted music. If it does, the second question would be whether paragraph 503 of the tariff act authorizes what the copyright act forbids.

"The copyright act of March 3, 1891 (Sup. Rev. Stat., 951), amending section 4956 of the Revised Statutes, provides that:

"'During the existence of such copyright the importation into the United States of any *book, chromo, lithograph* or *photograph*, so copyrighted, or any edition or editions thereof, * * shall be and is hereby prohibited.'

"'*Except* in the cases specified in paragraphs five hundred and twelve to five hundred and sixteen, inclusive, in section two of the act entitled "An Act to reduce the revenue and equalize the duties on imports, and for other purposes, approved October first, eighteen hundred and ninety;" and

"'*Except* in the case of persons purchasing for use and not for sale, who import, subject to the duty thereon, not more than two copies of such *book* at an one time * * * which are hereby exempted from prohibition or importation.' (Sup. Rev. Stat., 951, 952.)

"It was, of course, competent, in such acts, to forbid the importation of all such copyrighted articles, or to forbid the importation of only some of them. Whether the acts have done the one or the other must be determined by inspection.

"By Revised Statutes, Section 4952, as amended (Sup. Rev. Stat., 951), the following articles may be copyrighted, viz: A 'book, map, chart, dramatic or musical composition, engraving, cut, print, photo-

graph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of fine arts,' while by section 3 of that act, amending Revised Statutes section 4956, the prohibition of importation extends only to a 'book, chromo, lithograph or photograph.'

"It is obvious, therefore, that Congress intended by this section to prohibit the importation of only a small portion of the articles which might be copyrighted, and equally apparent that the prohibition intended and expressed is only of the four articles there named; and if this were the only prohibition, it is quite certain that it would not prohibit the importation of copyrighted music nor musical compositions.

"But, while this is the only express prohibition, it is not the only prohibition of importation contained in the copyright act of March 3, 1891. By amended sections 4964 and 4965, Revised Statutes (Sup. 953), the importation of any of the enumerated copyrighted articles is made a penal offense. This can mean nothing less than the prohibition of what is thus made penal, for what is implied in a statute is just as much a part of it as if expressed. The result is that while by amended section 4965, the importation of only four kinds of copyrighted articles is forbidden, with certain exceptions there specified, yet by amended sections 4964 and 4965 the importation of any and all copyrighted articles is prohibited, including the second prohibition of the four first named, and to this second prohibition there is no exception at all, unless the exceptions to cases in section 4956 extend also to the cases in sections 4964 and 4965. Under this kind of legislation it is impossible to arrive at any satisfactory conclusion as to what Congress really did intend by it.

"I am of the opinion, however, that the importation of all copyrighted articles mentioned in amended sections 4956, 4964, and 4965 is prohibited, with the exceptions stated in amended section 4956. And I am of the opinion that these exceptions, though not so expressed, apply alike to the prohibitions in all these three sections, so far as, in their nature, they are applicable to articles mentioned in sections 4964 and 4965."

It is impossible to add anything to the strength of this argument of the Attorney General. It is proper, however, to refer to section 4958 as amended by the Act of 1891. This section provides for supplying the customs officers with weekly lists of "the entries of titles *of all books and other articles wherein the copyright has been completed* * * *." It also provides that "the Secretary and the Postmaster General are hereby empowered and required to make and enforce such rules and regulations as shall prevent the importation into the United States, except upon the conditions above specified, of all articles prohibited by this act." The object of these weekly lists of title entries is, of course, to enable the customs officers to prevent illegal importation. But if only the four articles named in section 4956 are prohibited, why are lists furnished containing the titles of *all articles copyrighted?* The law plainly so requires, and the Treasury Department has so construed it from the very beginning.

In Treasury Decision No. 11,440, July 7, 1891, the department held that the list of title entries required by section 4958 should not be limited to titles of books, chromos, lithographs, and photographs (the only articles named in section 4956) but should "include the title of maps, charts, dramatic or musical compositions, engravings, cuts, and prints, paintings, drawings, statues, statuary, or models or designs, as well as of the other articles."

Prohibition of Importation.

In Treasury Decision No. 11,617, August 11, 1891, it was said:

> "Collectors of customs are entirely guided by the official lists furnished this department by the Librarian of Congress as provided in section 4 of the Act of March 4, 1891."

In Treasury Decision, No. 11,745, September 10, 1891, the department held unless a book is included in the list of title entries furnished the collector under section 4958, the printed matter and plates will not be treated as subject to the prohibitions of the Act. There are numerous other Treasury Decisions showing that importation of all the articles mentioned in sections 4964 and 4965 is illegal and prohibited unless made with the consent of the proprietor.

As further, and perhaps conclusive evidence of the intent of Congress upon this subject of importation we invite attention to Rev. Stat. Sec. 4971, as it stood prior to the Act of 1891. This section is as follows:

> "Sec. 4971. Nothing in this chapter shall be construed to prohibit the * * * importation * * * of any book * * * written, composed or made by any person not a citizen of the United States nor resident therein."

Clearly this shows that Congress intended to prohibit, and thought it had prohibited, importation of copyrighted books by some provision of that chapter, else it was unnecessary to except from the prohibition the works of foreign authors. But there was, at that time, nowhere in the statute any express prohibition of importation. The only sections to which the above-quoted provision of Sec. 4971 could apply are Sections 4964 and 4965, which made unauthorized importations penal, just as the present Sections 4964 and 4965 do. As before

tated the first express prohibition came into the law by the Act of 1891. This Act simply repeals Section 4971, thereby showing a general intent to broaden the prohibitions of unauthorized importations.

The English and Canadian Copyright Statutes, which are in many respects, though not entirely, like our own statute, make the importation of copyrighted books without consent of the proprietor illegal.

> Pitts *v.* George (1896), 2 Ch. 866, 66 L. J., Ch. 1;
> Frowde *v.* Parrish, 27 Ont. Rep., 526.

In the English case it was held that where an international copyright is owned by different persons in different countries, the owner in one country has no right to import the work into the other's country.

> Pitts *v.* George, *supra.*

Appellant argues (Appellant's brief, p. 7, Point VIII, also p. 26), that because appellee has published his book in England under a different title, and the customs officers are guided by the official lists contained in the Catalogue of Title Entries, appellee has laid a trap for the American publisher who is seeking abroad for material free from copyright which he may republish in this country. Appellant says, that under these circumstances the customs officers cannot check the importation. This argument is specious. These official lists are not intended to indicate what articles will be infringements if imported. They are intended to indicate what articles are copyrighted in this country, and to dispense with the necessity of furnishing evidence of that fact to the customs officers by the proprietor of the copyright, who objects to an unlawful importation. Prior to the Act of 1891, athough unauthorized importations were prohibited, there was no provision for an official list of copyrighted articles upon the faith of which the customs offi-

cers might act. The procedure then was for the proprietor to object to the entry of the unauthorized importation and to furnish the customs officers with proof of his ownership of the copyright, whereupon the piratical article was excluded from entry. This procedure is fully explained in Treasury Decision, No. 5416 (quoted *ante*, p. 93). The present list of title entries takes the place of the proof of ownership formerly required. The procedure otherwise remains the same. The customs officeres are *not at all guided by the name or title given to the book or article sought to be imported.* If they were, it would be easy to circumvent the statute. Identity of title would doubtless provoke inquiry, but it would not make even a *prima facie* case for or against entry. Knowing, by the official lists, what is copyrighted in this country, the question whether a particular book or other article is entitled to importation is determined by the customs officers by inspection and comparison. It is not at all unusual for books to be published abroad under a title different from that of the American copyright edition. This is illustrated by the case of *Harper* v. *Donohue*, 114 Fed., 491, wherein the American book was entitled the "Masquerader," and the English edition was entitled "John Chilcote, M. P.", and the importation of the English book was held illegal. There is no trap in this case, any more than in any case where a piratical book is published or imported. It is not asking extreme diligence of one intending to appropriate for his own profit the literary production of another, to require him to ascertain, by an examination and comparison of similar copyrighted books, on file in the Library of Congress, whether or not the book which he purposes to reproduce is the subject of a copyright. In the case of the Patent Law it is a common occurrence to examine the prior state of the art, and obtain an expert opinion based upon an examination of all existing patents before embarking up-

on the manufacture of a device which may possibly be the subject of a patent. Equal facilities are available by which to ascertain what publications are protected by copyright, and one purposing to reproduce a book, imported without the consent of the proprietor, neglects to avail himself of such facilities at his peril. The present appellant was not entrapped in any way, but well knew the identity of the books, and the facts show that the assumed deceptive tendency of a variance in title is more imaginary than real. Innocence, however, is not a justification for infringement of copyright, letters-patent, or trade-marks.

The Prohibition in Section 4956.

The argument thus far is perfectly valid even upon the assumption that Section 4956 contains no prohibition on the importation of books printed abroad from plates made from type set in this country, and that the only prohibition is contained in Section 4964. But this is not the correct construction of Section 4956. The language to be construed is as follows:

> "Section 4956. * * * During the existence of such copyright the importation into the United States of any book, chromo, lithograph, or photograph, so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives or drawings on stone made within the limits of the United States, shall be, and is hereby prohibited."

This provision is involved, but it is plain that the words "not made from type set," etc., refer to "plates" in the same clause, and not to "books" in the preceding clause.

The Supreme Court in *Bleistein* v. *Donaldson*, 188 U. S., 239, referring to Sec. 4952 said (Mr. Justice Holmes), 250:

Prohibition of Importation.

> 'We assume that the construction of Rev. Stat. Sec. 4952, allowing a copyright to the 'author, inventor, designer, or proprietor * * * (or) chromo' is affected by the Act of 1874, Ch. 301, Sec. 3, 18 Stat. 78, 79. That section provides that 'in the construction of this Act the words "engraving," "cut" and "print" shall be applied only to pictorial illustrations or works connected with the fine arts.' We see no reason for taking the words 'connected with the fine arts' as qualifying anything except the word 'works.' "

So in the section of the statute here under discussion, no construction is grammatically or legally possible, except that the phrase "not made from type set within the limits of the United States" qualifies only the word "plates."

The statute throughout speaks of *plates made from type* set within the limits of the United States. In the same section only a few lines from the provision we are considering, is this language, "Provided that in case of a book * * * the two copies of the same * * * shall be *printed* from type set within the limits of the United States or from plates *made* therefrom." This means plates made from type which has been set within the limits of the United States. The word *made* is used as applied to plates, that is, plates are *made*. Speaking of books the word used is not *made* but *printed*.

Obviously, Congress intended by the provision quoted to prohibit importation of the four copyrighted articles by *anyone* during the existence of the copyright. It also intended to prohibit the importation of plates, negatives, or drawings on stone from which these copyrighted articles could be reproduced, unless such plates were made from type set, negatives, or drawings on stone made within the limits of the United States. It thus secures domestic manufacture, as already shown. This is

the only reasonable construction which the language will permit. The construction adopted by the circuit court that "*made*" means also "*printed*" and refers back to "book, chromo, lithograph or photograph," is unreasonable, for *so construed there is no prohibition against the importation of foreign made negatives and lithographic drawings.* This is contrary to the plain intent of the law. The sentence is somewhat involved, but its meaning is plain. The punctuation of the sentence shows that the words "not made from type set" etc., refers only to "plates" and not to "books."

By the first part of Section 4956, the two copies of a book, photograph, chromo, or lithograph, deposited in the office of the Librarian of Congress must be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives or drawings on stone made within the limits of the United States. This secured to American labor the privilege of making the original plates. But fairness required that the proprietor having manufactured his plates here, should be allowed to take them abroad and print from them there for the foreign market. But this done, the copies so printed abroad may not be imported. Protection of American labor requires that such copies be kept out of this country. But having printed abroad for circulation abroad, the plates made from type set, or negatives, or drawings on stone made in this country, and so sent abroad, and used there, are allowed to be brought back for use in printing books and making photographs, chromos and lithographs in this country. In this way fair and equitable favor is shown to American labor, and the copyright proprietor is not unduly embarassed or burdened. To this general prohibition the statutes make certain limited exceptions not inconsistent with the general purpose of the prohibitions as above explained.

The importation of copyrighted "books" is prohibited regardless of where the type was set from which the

plates were made. This is made clear by the two exceptions, made in the latter part of the section, to the prohibition against importation. The first of these exceptions excepts from the prohibition "not more than two copies of *such book* at any one time." The phrase "such book" refers to the book, importation of which is prohibited in the preceding part of the same section. The second of these exceptions provides that where only the translation of a foreign book is copyrighted, "the prohibition of importation shall apply only to the translation of the same, and the importation of *the books* in the original language shall be permitted." This shows plainly that the prohibition against importation refers to copyrighted books without other qualification.

This is the interpretation of the Attorney General (21 Opinions Attorney Genl., 159, 160). Sec. 4956, with reference to books, is quoted as follows:

> "During the existence of such copyright the importation into the United States of any book * * * copyrighted or any edition or editions thereof * * * shall be and is hereby prohibited. * * * This act secures to the owner of the copyright of every book which shall have been copyrighted in accordance with the requirements of this statute * * * protection against the sale in this country of foreign publications of his book by prohibiting the importation of such foreign publications."
>
> "To this proviso there is an exception as follows:
>
> "And except in the case of persons purchasing for use and not for sale, who import, subject to the duty thereon, not more than two copies of such work at any one time.
>
> "Does this refer to two copies of an 'authorized edition' of such book?
>
> "The statute certainly does not say so, and the proviso to which this exception is made provides that 'during the existence of such copyright the importa-

tion into the United States of *any* book so copyrighted is hereby prohibited.

"I am unable to see on what ground it can be claimed that the exception refers to those books only the foreign publication of which has been authorized by the owner of the copyright.

"I am therefore of opinion

* * * * *

"That the exceptions in the case of persons purchasing for use and not for sale, who import subject to the duty thereon, not more than two copies of such book at any one time, is not limited in its application to the 'authorized editions' of such book."

HOLMES CONRAD,
Solicitor Genl.

Approved:
RICHARD OLNEY.

The same construction was put upon this section by Mr. Knox in 1901 (23 Opinion Atty. Genl., 445, 446), for he quotes this section as follows:

"During the existence of such copyright the importation into the United States of any book, chromo, lithograph, or photograph, so copyrighted, or any edition or editions thereof, * * * shall be, and is hereby prohibited."

The Circuit Court of Appeals has put a like construction upon the present law:

"It forbids the printing, publication or importing, selling or exposing for sale, of a copyright book, without the consent of the proprietor first obtained in writing signed in the presence of two or more witnesses." American Press. Ass'n *v.* Daily Story Pub. Co., 120 Fed., 766, 768.

Prohibition of Importation.

The following quotation from Putnam's Question of Copyright, p. 138 (4th Ed., 1904), shows what has been the proper construction of this clause:

> "It is made a condition of such copyright for all authors, whether resident or non-resident, that *all the editions of the works so copyrighted must be entirely manufactured within the United States;* the term including the setting of the type, as well as the printing and binding of the books.
>
> "This provision was instituted in the new Act at the instance of the Typographical Unions, and was insisted upon by them as essential. The unions were under the apprehension that if international copyright should be established without such conditions of American manufacture, a large portion of the book manufacturing now done in this country would be transferred across the Atlantic, to the injury of American typesetters and printers, and of the other trades employed in the making of books."

It will be noticed that the language of the prohibition in Section 4956 is as follows:

> "The importation into the United States of any book, chromo, lithograph or photograph so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives, or drawings on stone made within the limits of the United States, shall be and is hereby prohibited."

Now, the four products prohibited are books, chromos, lithographs or photographs. The mechanisms of production prohibited are plates that are not made from type set, negatives, or drawings on stone made within the limits of the United States. Now, books are printed from plates made from type set. Photographs, under the modern methods, are printed not from the negatives

themselves, but from plates made from those negatives, and chromos and lithographs are printed not directly from the original drawings on stone, but from transfer plates made from the original drawings on stone; hence, it is evident that the plates which are manufactured from the original typesetting for a book, the original negatives for a photograph, and the original drawings on stone for a chromo or lithograph are the means of maltiplication of books, chromos, lithographs and photographs, and that the clear idea of the statute is that when the original typesetting, negative making, or stone drawing is accomplished within the United States, the plates or mechanical instrumentality by which the ultimate book, chromo, lithograph or photograph is produced, may be taken abroad, employed there for printing copies for foreign circulation, and then brought back into the United States, but that plates not so manufactured from type set, negatives or drawings on stone within the United States, and all products of all plates wherever made, are inhibited from importation.

The law requires the two copies deposited to complete the copyright to be printed from type set or plates made within the United States. This provision was for the benefit of American labor. It requires as a condition of American copyright, American manufacture. The proprietor may then export the plates if he will, but books printed from those plates by foreign labor may not be imported into this country by the proprietor of the copyright to compete with the work of the American printer, but the proprietor may bring his American-made plates back into this country, and the object in excepting from the prohibition plates made from type set within the limits of the United States was to enable plates manufactured here and sent abroad for foreign editions to be brought back whenever the exigencies of business should require it. In the case at bar the plates were made here by American labor and sent to England. The contract

provides for the return of such plates at the termination of the contract. (Record, p. 28.) The statute is framed to permit this.

Mr. Putnam, whose comments on this provision have been quoted, was one of the most active promoters of the International Copyright Law of 1891, and probably knows more of the history and the object and purpose of its various provisions than any other person. His book above cited may be consulted for a full statement of the history, construction and results of the Act of 1891.

There was a great amount of debate on this provision of the Act before the Senate. The bill as passed by the House contained this provision:

> "During the existence of such copyright the importation into the United States of any book so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set within the limits of the United States shall be and is hereby prohibited except in the cases specified in Section 2505 of the Revised Statutes of the United States (this section permits colleges and institutions to import foreign editions), and except in the case of persons purchasing for use and not for sale, who import not more than two copies of such book at any one time."
>
> (Congressional Record, Vol. 22, part 3, 51 Cong. 2 Session, p. 2385.)

In this form of the statute it is very clear that the importation of copyright books is absolutely prohibited without regard to the place where the type was set from which the books are printed. There is also a prohibition against the importation of plates not made from type set within the limits of the United States. This intent is clear and unmistakable, and the proceedings in Congress show, that there was never any change of intent in this

regard. The amendments made before final passage of the bill do not, and were not intended to, change this absolute prohibition in regard to the importation of books, except so far, of course, as is shown by the express exceptions inserted in Section 4956. These amendments were made merely to broaden the prohibition against importation, and to apply it to three additional articles, to wit, chromos, lithographs, and photographs, and the means of production thereof. These amendments were engrafted upon the above proposed section substantially by interlineation, in a manner which made the language somewhat involved. But they did not change the language or the meaning of the provision as to the importation of books and plates as contained in the above quotation. As to books and plates the present statute must be construed just as though the above bill had been passed without amendment. The history of these amendments in Congress makes this clear.

Senator Frye, some of whose constituents were in the lithographing business, presented a memorial and insisted that the importation of chromos, lithographs, etc., be also prohibited. He presented an amendment which embodied the remaining words of the Section as it now stands. (Cong. Rec., *supra*, p. 2392.) This amendment was agreed to and this section seems not further to have been tinkered with, as far as the subjects covered are concerned. The words inserted have nothing to do with books, but refer entirely to artistic works. (Cong. Rec., *supra*, 2379.)

Senator Sherman proposed an amendment permitting general importation, subject to the payment of duty, and this provoked a long discussion. The argument was that under the section, as proposed, the importation of books upon which there was an American copyright was absolutely prohibited, and that it might be desirable to get such books, even though printed abroad, into this country. It was pointed out, however, by Mr. Evarts that if Mr.

Sherman's amendments were consented to it would practically destroy the effect of the whole law. (22 Cong. Rec., 2667.)

The amendment was nevertheless consented to and was afterward modified by an amendment proposed by Mr. Carlisle. (22 Cong. Rec., p. 2670.)

The bill was referred back to the House and the matter of importation was discussed. Mr. Payson said (Vol. 22, pt. 4, p. 3606):

> "Instead of an absolute prohibition of importation such as was contained in this bill when it left the House, there is only a qualified prohibition."

The House refused to agree to the amendments proposed. The Senate refused to recede. (Vol. 22, p. 4, p. 3853.) At a conference, however, a compromise was effected which permitted two copies for use and not for sale to be imported subject to duty. (Congressional Record, Vol. 22, p. 3882.)

Mr. Carlisle remarked on the floor of the Senate, when the Conference report was up for discussion (p. 3886):

> "This bill as it came here from the House prohibited simply the importation of books and nothing else. It was amended upon the motion of the Senator from Maine so as to prohibit the importation not only of books, but of maps, dramatic or musical compositions, engravings, chromos, lithographs, cuts, prints and photographs. In that form it passed the Senate, subject to the qualification made by the amendment proposed by the Senator from Ohio. The conference committee * * * modified the amendment * * * as to exclude from it maps, dramatic or musical compositions, engravings, cuts and prints, leaving it as it now stands and with the amendment of the Senator from Ohio excluded, an *absolute prohibition against the importation not*

> *only of all books whether they were originally composed and printed in the United States or abroad*, but of all chromos, lithographs and photographs whether they were designed in the United States or abroad * * * which shall be copyrighted."

The conference report was concurred in (3888) and the Act passed. See also Putnam's comment on the Sherman amendment (Putnam's Question of Copyright, pp. XXII).

A reading of the debates in Congress upon the Act of 1891 shows beyond question that Section 4956 as amended was intended as an absolute prohibition upon the importation of the copyrighted articles by anyone during the existence of the copyright, except in the cases expressly named as an exception from the prohibition. The idea that books printed and bound abroad could be imported if only the plates were made here never entered the mind of anyone during the entire debate in Congress. On the contrary, the prohibition on importation in Section 4956 was regarded as requiring books to be printed and bound here. Senator Platt, in explaining this clause of his bill, said: "We simply make an equitable arrangement that if a foreign work is to be circulated here, it is to be *printed and bound here.*" (Cong. Rec., Feb. 14, 1891, p. 2812.) If the court has any doubt on the mean- and intent of Sections 4956 and 4964 as they now stand in the law, a reference to these debates in Congress will remove it. All of the proceedings in Congress in regard to this bill will be found in the Congressional Record for December, 1890, and February and March, 1891. Attention is especially directed to the following pages, viz.: 58, 60, 61, 69, 2568, 2569, 2570, 2572, 2573, 2574, 2575, 2576, 2578, 2579, 2581, 2809, 2810, 2812, 2813, 2818, 2819, 3779, 4064, 4065, 4073, 4124 to 4130, inclusive, 4191 to 4197, inclusive.

Prohibition of Importation.

Appellant argues in its brief:

> "The statute thus makes plain the fact that the author may publish his book either here or abroad. The very purpose of the present copyright act being to give to foreigners the benefit of our laws, it would be absurd to assume that Congress intended to enforce the manufacture in this country of all copyrighted articles, or to prevent the foreigner from manufacturing in his home country. Had any such intention existed, it would certainly have found expression in the statute." (Appellant's brief, p. 15.)

It has just been seen that such intention did exist with respect to four articles, to wit, books, chromos, lithographs and photographs, and such intent has found unmistakable expression in the statute.

Again appellant says:

> "The main purpose of this act was to extend to aliens such benefits, and Congress unquestionably recognized the fact, that they might, and no doubt frequently would, effect the publication of their books, or the manufacture of their copyrighted articles in their home country." (Appellant's brief, p. 16.)

Congress did recognize the fact that aliens, having copyrighted their books in this country, might desire to manufacture in their own country, and supply this market with the product of foreign labor, and accordingly, at the instance at the labor unions of this country, specifically prohibited that very thing, as already fully explained. Appellant's argument thus falls to the ground.

Some Consequences of Appellant's Proposed Construction.

In seeking the legislative purpose it is permissible to

look at the consequences of a proposed interpretation of the statute, as bearing upon the legislative intent.

As already shown, Congress designed and intended to accomplish two distinct objects by the Act of 1891. First, it intended to extend copyright protection and secure for American authors and publishers the benefits of a foreign copyright in exchange for a grant of similar protection here to foreigners. Second, it intended to protect and foster American labor, especially the printing trades, by making complete domestic manufacture a condition of American copyright. Neither object is promoted by the construction of the statute contended for by appellant. On the contrary, such construction hampers and cuts down the protection accorded to copyright owners, and by practically making it impossible to manufacture plates here to be sent abroad and used in the foreign editions, it deprives the American laborer of just that much work, which it was the object of the statute to secure for him. By compelling the publisher to set his type at least twice, once here and once abroad, and make separate sets of plates, it diminishes the profits, and adds to the expense of the American publisher. In this way it acts directly upon the American author, and makes the product of his mind and genius less valuable and salable than it otherwise would be. These results are not speculative, but are inevitable. They do not advance the purpose of the act, but are directly opposed to it.

But the above consequences are not the most serious results of the construction contended for by appellant. If its construction is correct, it is quite possible that the owner of an American copyright may practically lose it through no fault of his own, and without anyone committing an illegal act. For example:

Take the ordinary case of an author who, reserving to himself the copyright, contracts with a publisher to

publish his book on a royalty. Under such a contract, the publisher makes and owns the plates. Suppose that such publisher fails or goes into bankruptcy, and his assets including such plates are sold. Or suppose a creditor of the publisher levies on such plates and sells them on execution. Or suppose the publisher, for reasons of his own, voluntarily sells the plates or a duplicate made therefrom to a third person. The transaction is lawful, and the purchaser becomes the lawful owner of the plates, but he does not thereby become the owner of the copyright.

> Stephens *v.* Cady, 14 How. U. S., 528;
> Stevens *v.* Gladding, 17 How. (U. S.), 447;
> Carter *v.* Bailey, 64 Me., 458, 18 Am. Rep., 473;
> 7 Am. & Eng. Ency. Law, 2nd Ed., p. 566;
> 9 Cyc., 933.

He cannot lawfully print from such plates in this country. But he can lawfully ship such plates across the border, and then, under appellant's construction of the statute, he may lawfully print and import the book into this country without limit or restraint! What practical value would the author's copyright have under such circumstances? He could be ruinously undersold in his own market. His exclusive right is gone, yet in what manner is he at fault, and wherein has the law been violated or disregarded, if appellant's construction of the law be correct? It has already been shown that maps, charts, musical or dramatic compositions, and all other copyrighted articles not expressly named in Section 4956 could also be lawfully imported without limit, if this view be correct. *Such a construction is a virtual repeal of the copyright law, by the very amendment which was intended to broaden it.* Such a construction cannot be correct.

It is submitted that the general importation of copy-

righted books without the consent of the proprietor is unlawful and prohibited, notwithstanding such books are printed from plates made from type set in this country.

III.

THE IMPORTATION OF THE BOOK FOR APPELLANT WAS ILLEGAL, IN ANY EVENT, BECAUSE MADE FOR THE PURPOSE OF REPRODUCTION AND SALE OF SUCH REPRODUCTIONS, AND HENCE NOT AUTHORIZED BY THE EXCEPTION IN THE STATUTE WHICH PERMITS IMPORTATION OF NOT MORE THAN TWO COPIES OF A BOOK AT ANY ONE TIME "FOR USE AND NOT FOR SALE."

Appellee's contract with the English publisher contained the following provision:

> "Said George Bell & Sons further agree that they will not, either directly or indirectly, import into the United States or Canada, or sell therein, any copies of said dictionary, and will not sell to others for the purpose of importation, and will use all reasonable means to prevent their importation by others." (Rec., 28, 29.)

It is expressly stipulated in the agreed statement of facts, as follows:

> "That none of the copies of said Webster's Brief International Dictionary have been imported into, or sold in the United States by complainant, or George Bell & Sons, or by any one acting for or on behalf of either of them." (Rec., 29.)

No breach of this contract is asserted.

The agreed statement of facts, after reciting the importation by Ogilvie of a copy of the English book contains the following stipulation:

Appellant's Importation Illegal.

"That said Ogilvie obtained said copy of said Webster's Brief International Dictionary, not for the purpose of selling said individual copy, but for the purpose and intent of having the United Dictionary Company reprint and publish said book without the consent of either complainant or George Bell & Sons." (Rec., 34.)

The opinion of the Circuit Court contains the following:

"Defendant imported a copy of the English publication 'for use,' as he states, and 'not for sale,' for the purpose of reproducing it in the United States. So far as the record shows, this and another subsequently imported by defendant were the only volumes of the English edition in this country." (Rec., 42.)

The Circuit Court of Appeals said:

"No copies of the English book have ever been imported into or sold in the United States either by appellant or George Bell & Sons, or any one acting for or on behalf of either." (Rec., 54.)

The above extracts from the record show two vital facts:

(1) That the importation of Ogilvie was without and against the consent of the appellee, and that appellee has never consented to any importation of its book.

(2) That this importation was for the purpose of reproduction and sale in this country.

It further appears that all this was done by appellant with full knowledge of the American copyright, and that neither appellant nor Ogilvie was in fact misled in any way. (Rec., 33.)

Construction of Statute.

If appellee is right in its position that general importation of copyrighted books without the consent of the proprietor is prohibited by Section 4964, it follows that the only importation shown in this case was illegal and prohibited, unless legalized by some other section of the statute.

The only provisions of the statute which by any possibility could be claimed to authorize such importation are to be found in the express exceptions from the prohibition of importation contained in Section 4956 as amended by Act of 1891. The only one of these exceptions which can possibly apply to this case is in the following words:

> "And except in the case of persons *purchasing for use and not for sale,* who import subject to the duty thereon, not more than two copies of such book at any one time." (Rev. Stat., 4956 as amended by Act of 1891.)

In the brief and on the argument below, appellant based its whole claim to the lawful possession of the two copies in question upon this provision of the statute. The ground taken by the Circuit Court has already been disposed of. The ground taken by appellant requires but brief examination.

The exceptions contained in the prohibition clause of Section 4956 would naturally seem to be limited to the prohibitions contained in that section, and not to qualify in any way the prohibitions of the penal Sections 4964, 4965. But conceding (for the purpose of argument only) that such exceptions do apply to Section 4964, still the only importation shown in this case was unlawful.

The question under this head comes down to this: Is the importation of a copyrighted book for the purpose of unauthorized reproduction and sale an importation "for use and not for sale" within the meaning of the

statute? If not, then the only importation in this case was unlawful.

A moment's consideration will show that an importation for such a purpose is necessarily unlawful, and not an importation "for use" within the meaning of the phrase in the statute. Obviously this permission, by way of exception, to make this limited importation for this limited purpose was not intended to repeal the copyright law in regard to books. The essence of all copyright laws is a grant of the exclusive right to multiply and vend copies. Appellee's purpose in making the importation was an unlawful purpose destructive of the statute. When he made the importation ostensibly "for use and not for sale" he acted in fraud of the statute. Moreover, in any fair sense of the term, an importation for the purpose of reproduction and the sale of such reproductions is an importation "for sale" within the meaning of the statute. Otherwise the statute has prohibited the lesser and permitted the greater wrong.

It has been held by the Treasury Department and by Solicitor General Conrad, that the clause under consideration permits the importation of two copies not only of authorized foreign editions, but even of unauthorized or piratical foreign editions.

> Treasury Decision, No. 16046, rendered May 14, 1895; 21 Op. Atty. Gen., 159.

Clearly a statute which permits the importation "for use and not for sale" of two copies of an unauthorized and piratical foreign edition notwithstanding the existence of a valid domestic copyright does not thereby permit an importation for reproduction and sale of such reproductions, and as the Soilcitor General points out in the opinion cited (21 Op. Atty. Gen., 159, 161), the Act makes no distinction between authorized and unauthorized foreign editions.

Clearly the "use" for which the statute permits this

limited importation is personal use by the importer in the way that books are ordinarily used, that is, for the purpose of reading or reference as a source of information. An importation for any other purpose is an importation for "abuse" and not for "use" in the sense intended by the statute.

The importation by appellant was clearly unlawful, and it cannot be justified either upon the ground taken by the Circuit Court, that the books were printed from plates made from type set in this country, or upon the ground taken by appellant that Ogilvie imported them "for use and not for sale."

Property obtained by fraud or in violation of contract or statute or subject to conditions or restrictions cannot be used except subject to and in conformity with such conditions and restrictions.

Exch. Tel. Co. *v.* Gregory, L. R. (1896), 12 Q.B., 147.

Sperry & Hutchinson Co. *v.* Temple, 137 Fed., 992.

Garst *v.* Charles (Mass.), 72 N. E., 839.

Armour *v.* Connelly (N. J.), 52 At. Rep., 383.

National Tel. Co. *v.* Western Union Co., 119 F. R., 294.

Board of Trade *v.* Christy Co., 195 U. S., 194.

United States *v.* Stowell, 133 U. S., 16.

IV.

THE IMPORTATION OF THE BOOK FOR APPELLANT DID NOT CONSTITUTE, IN LEGAL EFFECT, A PUBLICATION BY APPELLEE IN THIS COUNTRY.

The Circuit Court having decided that the two books were rightfully in possession of appellee because there was no prohibition against importation, held that this

amounted to a publication in this country by appellee without the statutory notice, and upon this ground dismissed the bill.

This question of publication is made by the Circuit Court to turn upon the lawfulness of the importation. If it had not deemed the importation lawful, it would not have held it to constitute a publication. This importation *was* unlawful. Hence there was no publication in this country without the notice.

That an unlawful importation confers no rights upon the importer which he did not otherwise have is, of course, clear. It has been distinctly so held, in a case quite similar to the present case, and it is worthy of remark that this same man, Ogilvie, or his corporation, was a defendant in that case.

> Harper *v.* Donohue and Ogilvie, 144 Fed., 491, affirmed without opinion in 146 Fed., 1023.

In the case referred to, defendants imported a copy of the authorized English edition of "The Masquerader," a book copyrighted both in this country and in England under the International Copyright Act of 1891. In that case, as in this, the English edition contained no notice of the American copyright. In that case, however, the English and American copyrights were owned by different assignees of the author. Judge Sanborn said.

> "It is further insisted that, as it is admitted defendants' publication is not taken from complainant's book, but from *the authorized English edition, published without notice of copyright*, the case fails. This position is supported by quotation from Drone on Copyright, 399-400, and *Johnson* v. *Donaldson*, 3 Fed., 22. The Chicago Tribune case is also in point here, since the defendant in that case received and published telegraphic dispatches from the London Times, covering extracts from its columns; and

it was held that the Tribune could not prevent this by copyrighting its own paper, covering other extracts or articles from the Times.

"But I think the rule inapplicable to this case, because defendants did something expressly prohibited by the Copyright law. Section 4956, as added to in 1891, provided:

"During the existence of such copyright the *importation* into the United States of any book so copyrighted, or any edition or editions thereof, or any plates or the same, *not made from type set* * * * *within* the limits of *the United States,* shall be and is hereby prohibited.'

"Defendants did just what is here prohibited. They imported a substantia copy of The Masquerader not made from type in this country. They are therefore within the condemnation of the law. *They cannot be allowed to found legal rights on actions* made unlawful by being prohibited.

"In the dictionary case above referred to (*i. e.*, the present case below), defendant imported the books, as did defendants here, but they were made from plates in this country. It did nothing prohibited, and was, with some reluctance on the part of the court, justified in so doing."

Harper *v.* Donohue and Ogilvie, 144 Fed., 491.

As already shown, the importation in this case was equally unlawful and prohibited. Hence, the appellant here cannot found any rights on such unlawful act.

It will be noted that Judge Sanborn in thus commenting on the present case, as decided at the circuit, followed and fell into the same error as did Judge Kohlsaat in holding that the importation of books printed from plates made from type set in this country is not illegal. But Judge Sanborn was not considering that question, which

was not presented in the case before him. Hence his dictum cannot be regarded as a deliberate judicial approval of the decision of the circuit court, especially as his decision was not founded upon, but was rendered in spite of the dictionary case.

Again it has been held that the exceptions in Section 4956, allow the importation of two copies of even piratical foreign editions.

> Opinion of Sol. Gen .Conrad, 21 Op. Atty. Gen., 159, 161.

In such a case the importer is lawfully in possession of a lawfully printed and lawfully imported book. It may or it may not contain the notice of copyright, but in either case it is clear that the proprietor cannot be held to have published such imported copies, and in either case the importer may not reproduce, though he may "use" such imported copies.

Even conceding that the condition of the law is such that appellee could not have had the present importation stopped at the Custom House, it does not follow that the importation was in legal intendment a publication by appellee in this country. If, as in this case, it was without the express written consent of the proprietor, it amounts to an infringement of the copyright, and subjects the importer to the penalties provided by Sec. 4964. How can an infringement amount to a publication by the proprietor? Even where a licensee, with right to publish, violates the terms of his license by publishing without the notice, it is an infringement and not a publication by the proprietor.

> *American Press Assn.* v. *Daily Story Pub. Co.*, 120 Fed., 766 (C. C. A.).

The right to stop a piratical importation at the Custom House is merely the first, and perhaps the most

effective, protection of the copyright. The other remedies by injunction, and action for damages and forfeitures, apply after the infringing work has got into the country. The importation does not become a lawful publication merely because the customs officers will not seize it or have not so done. Appellant itself takes this position in its brief.

Moreover, the only importation in this case was that made by appellant "for use and not for sale." This was, at most, and by the express terms of the statute, a special or limited publication, as distinguished from a general publication, and therefore no notice in such book was required in order to preserve appellee's rights, especially as such importation was made without and against the consent of appellee.

> American Tobacco Co. *v.* Werckmeister (U. S. Supreme Court, unreported, No. 28, October Term, 1907, opinion of December 2, 1907).

In the present case it appears (1) that the only importation of books was made without and against the consent of the appellee, for the express purpose of piratical reproduction and sale; (2) that the importation was illegal and piratical both under Section 4956 and Section 4964. It therefore did not constitute a publication in this country by appellant nor deprive the appellant of the right to maintain its bill for injunction. The Circuit Court of Appeals correctly so held.

Conclusion.

The defense interposed as a reason why the literary piracy of which appellant is concededly guilty should be justified, is purely a technical one. Appellee, and the author of Webster's High School Dictionary have expended scholarship, industry, time and money, and have given to the world a useful book. It was for the encour-

agement of learning by the production of books such as this that our constitutional provision was framed and our copyright laws enacted. Within the United States appellee has complied literally and exactly with every requirement of its laws, and should be accorded every protection which those laws secure.

Appellant has done nothing to merit any encouragement. The result of appellee's labors has been appropriated by taking its book and photographing it and it is appellant's purpose to publish and sell copies made from these photographic plates for its own profit and benefit, and at a price that will make successful competition by appellee impossible, since the things which make the book of value, its literary merit and scholarship, being stolen, have cost appellant nothing, and this in disregard of appellee's protest and of all principles of right and justice.

As far back as 1769, Mr. Justice Aston in *Miller* v. *Taylor,* 4 Burr., 2303, said:

> "Upon the whole, I conclude, that upon every principle of reason, natural justice, morality, and common law; upon the evidence of the long received opinion of this property, appearing in ancient proceedings, and in law cases; upon the clear sense of the legislature, and the opinions of the greatest lawyers of their time in the court of chancery, since that statute—the RIGHT of an author to the COPY of his works appears to be well founded, and that the plaintiff therefore is, upon this special verdict, entitled to his judgment. And I hope the learned and industrious will be permitted from henceforth, not only to reap the fame, but the PROFITS of their ingenious labors, without interruption to the honor and advantage of themselves and their families."

These rights of property so long recognized are not lightly to be destroyed. Copyright statutes should be

given a construction which will protect authors in the benefits intended to be secured to them. No strained construction should be indulged in which will work the forfeiture of a property which Congress and the courts have sought so long to preserve to those justly entitled to it.

It is therefore urged that the decree below be affirmed.

Respectfully submitted.

CHARLES N. JUDSON,
WILLIAM B. HALE,
FRANK F. REED,
EDWARD S. ROGERS,
Solicitors and of Counsel for Appellee.

UNITED DICTIONARY COMPANY *v.* G. & C. MERRIAM COMPANY.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 129. Argued January 23, 1908.—Decided February 3, 1908.

The requirement of the Copyright Act of June 18, 1874, c. 301, § 1, 18 Stat. 78 (Rev. Stat. § 4962), that notice shall be inserted in the several copies of every edition, does not extend to publications abroad and sold only for use there.

THE facts are stated in the opinion.

Mr. George P. Fisher, Jr., *Mr. James H. Peirce* and *Mr. William Henry Dennis*, for appellant, submitted:

The copyright statute requires the insertion of the copyright notice in editions of a book published abroad by and with the consent of the owner of the American copyright on such book. Rev. Stat. § 4962; *Callaghan* v. *Myers*, 128 U. S. 617 (652); *Thompson* v. *Hubbard*, 131 U. S. 123, and cases there cited. As § 4962 contains no language excepting from its provisions books published in foreign countries, or copyrighted articles manufactured abroad, it applies to all books or like copyrighted articles regardless of the country in which they may be published or made. This is plain when that section is read in connection with other sections of the same act.

Section 4956 of the Revised Statutes specifically provides "that no person shall be entitled to a copyright unless he shall on or before the day of publication in this or any foreign country, deliver to the office of the Librarian of Congress" a printed copy of the title of his book; and the same section further provides as a prerequisite to a valid copyright, that he

shall deliver to the Librarian of Congress two copies of the book "not later than the day of publication thereof in this or any foreign country." The statute thus makes plain the fact that the author may publish his book either here or abroad. See Drone on Copyright, 295, 577; *Boucicault* v. *Wood*, Fed. Cas. No. 1,693; *The "Mikado" Case*, 25 Fed. Rep. 183; *Gandy* v. *Belting Co.*, 143 U. S. 592; Curtis on Patents, par. 98.

By leave of court *Mr. George W. Ogilvie*, President of the United Dictionary Company, filed a brief in behalf of appellant.

Mr. William B. Hale, with whom *Mr. Charles N. Judson*, *Mr. Frank F. Reed* and *Mr. Edward S. Rogers* were on the brief, for appellee:

Appellee's copyright is not invalidated by the failure to insert the notice of the American copyright in the books published in England, but not imported by, or with the consent of appellee into the United States, because the statute has no extra-territorial operation, and therefore does not require such notice to be inserted in such foreign books.

The rule that statutes of a State or Nation have no extra-territorial operation has been applied to the Patent Act which is *in pari materia* with the Copyright Act. *The Apollon*, 9 Wheat. 370; *Bond* v. *Jay*, 7 Cranch, 350; *Brown* v. *Duchesne*, 19 How. 183; *Gandy* v. *Belting Co.*, 143 U. S. 592; *Chase* v. *Fillebrown*, 58 Fed. Rep. 377; *American Sulphite Pulp Co.* v. *Howland Falls Pulp Co.*, 70 Fed. Rep. 986, 992; *Tabor* v. *Commercial National Bank* (C. C. A.), 62 Fed. Rep. 383; *The State of Maine*, 22 Fed. Rep. 734; *Colquohoun* v. *Heddon*, L. R. 25 Q. B. D. 129, 134; *Warren* v. *First National Bank*, 149 Illinois, 9, 25; *Johnson* v. *Mutual Life Ins. Co.*, 180 Massachusetts, 407; *S. C.*, 62 N. E. Rep. 733; *Attorney General* v. *Netherlands Fire Ins. Co.*, 181 Massachusetts, 522; *S. C.*, 63 N. E. Rep. 950; *Carnahan* v. *Western Union Telegraph Co.*, 89 Indiana, 526.

The object of requiring notice is not subserved by insertion in foreign books. *Sarony* v. *Burrow-Giles Co.*, 17 Fed. Rep. 591; *S. C.*, 111 U. S. 53; *Snow* v. *Mast*, 65 Fed. Rep. 995; *American Press Assn.* v. *Daily Story Pub. Co.*, 120 Fed. Rep. 766.

The form of the prescribed notice shows that it was not intended to be inserted in foreign books. Rev. Stat. § 4962; Trade-mark Act of Feb. 20, 1905, § 28.

The owner of the copyright cannot control the foreign publication and should not be penalized for consenting to what he cannot prevent. No statute will be construed to work hardship, injustice, or inequality. *Thompson* v. *Hubbard*, 131 U. S. 123; *American Press Assn.* v. *Daily Story Pub. Co.*, 120 Fed. Rep. 766; *Harper* v. *Donohue & Ogilvie*, 144 Fed. Rep. 491; *Hepburn* v. *Griswold*, 8 Wall. 607; *Lionberger* v. *Rause*, 9 Wall. 475; *Davis* v. *Bohle*, 92 Fed. Rep. 328; *United States* v. *Crawford*, 47 Fed. Rep. 561. See also *Dwight* v. *Appleton*, 8 Fed. Cas. No. 4,215; *Haggard* v. *Waverly Pub. Co.*, 144 Fed. Rep. 490; *Pierce & Bushnell Co.* v. *Werckmeister*, 77 Fed. Rep. 54; *American Tobacco Co.* v. *Werckmeister*, 146 Fed. Rep. 375; *American Tobacco Co.* v. *Werckmeister*, 207 U. S. 284; *Boucicault* v. *Wood*, Fed. Cas. No. 1,693.

Importation into the United States of copyright matter without consent of the owner of the American copyright, is and always has been prohibited. Rev. Stat. § 3061 and §§ 4964, 4956, as amended.

Sections 4964 and 4965 are penal statutes. *McDonald* v. *Hearst*, 95 Fed. Rep. 656; *Schriver* v. *Sharpless*, 6 Fed. Rep. 175, 179; *S. C.*, 110 U. S. 76; *Taylor* v. *Gilman*, 24 Fed. Rep. 634; *Wheeler* v. *Cobby*, 70 Fed. Rep. 487.

What is made penal is prohibited. *Opinion Attorney General Knox*, 23 Op. A. G. 445; and as to double prohibition of importation, see §§ 4964–4965, Rev. Stat.

The importation of the book by appellant was illegal because made for the purpose of reproduction and sale of such reproduction, and hence not authorized by the exception in

the statute which permits importation of not more than two copies of a book at any one time "for use and not for sale." Treasury Decision, No. 16,046; *Opinion Solicitor-General Conrad*, 21 Op. A. G. 159.

By leave of court, *Mr. Stephen H. Olin* filed a brief herein as *amicus curiæ* on behalf of the American Copyright League supporting the contention of defendant in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a suit brought by the appellee to restrain the infringement of copyright in a book entitled "Webster's High School Dictionary." The appellee, a Massachusetts corporation, took out copyrights at the same time in England and here. It published and sold the book in this country with the statutory notice of copyright, and made a contract with English publishers, under which it furnished them with electrotype plates of the work, and they published it in England, omitting notice of the American copyright. The English work has a different title, "Webster's Brief International Dictionary," and has some other differences on the first three and last thirty-four pages, but otherwise is the same. The appellant, an Illinois corporation, sent for the English book with intent to reprint it, and was about to publish it when restrained. The English publishers agreed not to import any copies of their work into this country, and also to use all reasonable means to prevent an importation by others, so that the appellee cannot be said to have assented to the appellant's act. So far as appears, the only copies that have been brought over are the one above mentioned and another, purchased for use but not for sale, by the president and manager of the appellant. The question is whether the omission of notice of the American copyright from the English publication, with the assent of the appellee, destroyed its rights, or, in other words, whether the requirement of the act of June 18, 1874, c. 301, § 1, 18 Stat. 78 (Rev. Stat. § 4962), that notice shall be in-

serted "in the several copies of every edition published" extends to publications abroad. The Circuit Court sustained the defendant's contention and dismissed the bill. 140 Fed. Rep. 768. The Circuit Court of Appeals reversed this decision, 146 Fed. Rep. 354; *S. C.*, 76 C. C. A. 470, and the case is brought to this court by appeal.

Notwithstanding the elaborateness of the arguments addressed to us and the difference of opinion in the courts below, there is not a great deal to be said, and the answer seems to us plain. Of course, Congress could attach what conditions it saw fit to its grant, but it is unlikely that it would make requirements of personal action beyond the sphere of its control. Especially is it unlikely that it would require a warning to the public against the infraction of a law beyond the jurisdiction where that law was in force. The reasons for doing so have not grown less, yet in the late statute giving copyright for foreign publications the notice is necessary only in "all copies of such books sold or distributed in the United States." Act of March 3, 1905, c. 1432, 33 Stat. 1000, amending Rev. Stat. § 4952. So it is decided that the section punishing a false notice, which naturally would be coextensive with the requirement of notice, did not extend to false statements affixed abroad. *McLoughlin* v. *Raphael Tuck Co.*, 191 U. S. 267. The same conclusion would follow from the form prescribed for the notice, which would be inapt in foreign lands.

It is said that the act of 1905 cannot affect the construction of the law under which the parties' rights were fixed, and it cannot, beyond illustrating a policy that has not changed. But the age of the condition affords another reason for confining it as the later condition is confined. When it first was attached, in 1802, there was little ground to anticipate the publication of American works abroad. As late as 1820 Sydney Smith, in the Edinburgh Review, made his famous exclamation, "In the four quarters of the globe, who reads an American book?" If, however, there was a publication abroad, importation without the consent of the owner was

forbidden in general terms, a fact giving another reason for the narrower construction of § 4962. If that was the true construction once, it is the construction still. Again, when the present act was passed, there was no foreign copyright for an American author, and Congress knew and he knew, as he knows now, if he contents himself with home protection, that his work might be reprinted without notice of any sort. Such reprints rather inconsistently are called piracies in argument. But whatever the moral aspects may be, the piracy is a legal right, and as such its exercise must be contemplated by the author. It does not matter whether he does so with regret at the loss of money or with joy at the prospect of fame, and it is difficult to see any greater difference between giving consent to the foreign publication and intentionally creating the opportunity, the inducement and the right. But it hardly would be argued that because no copyright had been taken out in England and therefore the reprint there was lawful, an American copyright could be defeated by importing the English book and reprinting from that. *Thompson* v. *Hubbard*, 131 U. S. 123, 150. It would be even bolder to say that the American author would have stood worse if in the days before he could get a copyright in England he had made an arrangement with English publishers to secure some payment from them. Yet that is the logic of the appellant's case.

If a publication without notice of an American copyright did not affect the copyright before the days when it was possible to get an English copyright also, it is not to be supposed that Congress, by arranging with England for that possibility, gave a new meaning to the old § 4962, increasing the burden of American authors, and attempted to intrude its requirements into any notice that might be provided by the English law. The words of the section remained unchanged, notwithstanding the grant of a limited liberty of importation, while other sections were amended where there was reason for a change.

It may be that in most cases the importation of a pirated English copy of an American book would be unlawful, whereas

it is argued that the importation was lawful in the case at bar. The appellee makes a strong argument that the appellant's importation was wrong. But it is hard to see how the right to copy a book, whether lawfully or unlawfully imported, can be affected by the mode in which it got here. The analogies of the law are the other way. A person is subject to the jurisdiction, even if he was brought there by wrong. *Pettibone* v. *Nichols*, 203 U. S. 192. A document is admissible in evidence, although it was improperly obtained. *Commonwealth* v. *Tucker*, 189 Massachusetts, 457, 470; 3 Wigmore, Evidence, § 2183. The argument for the appellant dwells somewhat fancifully on the possibilities of innocence being led astray. All those possibilities might exist if a pirated volume should be smuggled into the United States. Moreover the appellant argues, with the support of the opinion of an Attorney General and a Solicitor General, that under § 4956 and its amendments two copies of an unauthorized edition lawfully might be imported for use. 21 Op. Atty. Gen. 159, 162. The statutes cannot be expected to do more than to secure the author and the public so far as is reasonably practicable. The obvious plan is not to be distorted by the chance that ingenuity may find some way to slip through the law uncaught.

As we are satisfied that the statute does not require notice of the American copyright on books published abroad and sold only for use there, we agree with the parties that it is unnecessary to discuss nice questions as to when a foreign reprint may or may not be imported into the United States under the present provisions of our law.

Decree affirmed.